

Minutes of the Meeting  
Rules Committee  
December 15, 2008

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On Monday, December 15, 2008 the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 3:18 p.m.

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. JANE S. SCHOLL  
HON. MICHAEL R. SHELDON

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

Agenda

1. The members of the Committee who were present at the November 20, 2008 meeting unanimously approved the minutes of that meeting after making revisions to Appendix A.

2. The Committee considered a proposal by Attorney James H. Lee to amend Section 2-64 concerning the procedure by which attorneys are appointed trustees to close the law practices of deceased attorneys.

After discussion, the Committee referred the proposal for comment to the CBA Task Force on Attorney Trust Accounts, to the CBA Probate Section, to Chief Disciplinary Counsel Mark Dubois and to Statewide Bar Counsel Michael Bowler.

3. At its meeting on November 20, 2008, the Rules Committee considered proposals submitted by Attorney Rafael Podolsky to amend various rules in light of Sections 15 through 20 of Public Act 08-176, concerning foreclosure mediation, and a proposal by Attorney Nicholas Cimmino to amend Practice Book Section 17-20 in light of Section 16(b)(1) of Public Act 08-176. Justice Zarella had previously given Attorney Podolsky's proposals to Joseph D'Alesio, Executive Director of Court Operations, to forward to Judge Mintz's Bench/Bar Foreclosure

Committee for review and comment, but that committee has not yet forwarded its response. Justice Zarella agreed to discuss the proposals with Judges Quinn and Mintz and, if necessary, to draft rules revisions based on certain of the proposals.

At this meeting, the Committee considered the draft rules revisions submitted by Justice Zarella. After discussion, the Committee unanimously voted to submit to the Superior Court judges for adoption on an interim basis the proposed revisions to Sections 3-3, 10-8, 10-12 and 17-20 as set forth in Appendix A. The proposals will not be submitted for adoption until the Rules Committee receives the Bench/Bar Foreclosure Committee's proposals to amend the foreclosure rules.

4. The Committee continued its consideration of a proposal from the Association of Corporate Counsel to amend the definition of "organization" in Section 2-15A (b) (2) by adding "employer sponsored entities" to the parenthetical in that provision.

After discussion, the Rules Committee further revised the language proposed by the Association of Corporate Counsel and unanimously voted to submit to public hearing the revision to Section 2-15A as set forth in Appendix B attached hereto.

5. The Rules Committee considered proposed amendments to the discovery rules regarding electronically stored information, submitted by Judge Barbara M. Quinn, Chief Court Administrator, on behalf of the Civil Commission. Judge Quinn advised the Committee that these proposals are the work of a subcommittee of the Civil Commission chaired by Attorney Charles DeLuca and were voted on favorably by the full Civil Commission. The proposals are based on the Uniform Rules Relating to Discovery of Electronically Stored Information adapted to Connecticut practice.

After discussion, a member of the Rules Committee raised some concerns with the proposals and the Committee agreed to invite Attorney DeLuca to attend an upcoming meeting to address those concerns.

6. At its November meeting, the Committee continued its discussion concerning whether lawyers admitted in Connecticut should be required to disclose on their registration forms whether they maintain malpractice insurance. The Committee decided at that meeting that the materials that are before the Rules Committee on this topic should be forwarded to the local bar associations in this state for comment.

At this meeting, Justice Zarella reported to the Committee that he had forwarded the materials to the local bar associations for comment.

7. The Rules Committee took the following actions concerning recommendations by the Legal Specialization Screening Committee (LSSC):

(a) The Rules Committee considered a recommendation by the LSSC that the National Board of Legal Specialty Certification be approved for recertification as a certifier in the specialty areas of Civil Trial Practice and Criminal Law.

After discussion, the Rules Committee unanimously approved the application for recertification by the following vote:

The Rules Committee, after reviewing the report of the Legal Specialization Screening Committee dated December 4, 2008, recommending approval of the application of the National Board of Legal Specialty Certification for renewal of its authority to certify lawyers as specialists in the fields of civil trial practice and criminal law, unanimously approves the National Board of Legal Specialty Certification for a five year period commencing February 22, 2009 as qualified to certify lawyers as specialists in those fields. This approval is subject to the condition that the National Board of Legal Specialty Certification is required to notify promptly the Legal Specialization Screening Committee of any material changes in the information contained in its application or in its methodology for certifying lawyers as such specialists during the term of this approval.

(b) The Rules Committee unanimously approved action taken by the LSSC approving proposed revisions to the *Standards, Procedures and Rules* of the Connecticut Bar Association's Standing Committee on Workers' Compensation.

(c) The Rules Committee considered revisions made by the LSSC to its Regulations and Application.

After discussion, the Rules Committee unanimously voted to approve such revisions, which are set forth in Appendix C attached hereto.

(d) The Rules Committee unanimously voted that, with regard to the actions taken by it in paragraphs (a) through (c) above, any Rules Committee member may by December 22, 2008, advise Justice Zarella or the undersigned that such member wishes to submit a veto with regard to any of those actions. Any action that is the subject of a veto will be placed on the agenda of the January, 2009 meeting for further consideration.

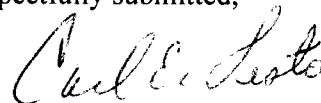
8. At its meeting on March 31, 2008, the Rules Committee considered proposed revisions to the juvenile rules submitted by Judge Christine E. Keller on behalf of the Juvenile Task Force. At that meeting the Committee approved the Task Force's proposals, with some further revisions, for submission to public hearing on June 2, 2008. The revisions to Chapter 30a were not included in the appendix to the minutes with the other chapters of the juvenile rules that were approved for public hearing and were not submitted to public hearing or to the judges for adoption at the 2008 Annual Meeting of the Superior Court Judges.

At this meeting, the Rules Committee considered the proposals and voted unanimously to submit the revisions to Chapter 30a as set forth in Appendix D attached hereto to the Superior Court judges for adoption on an interim basis pursuant to Practice Book Section 1-9 (c), which provides a procedure whereby revisions to Practice Book rules can be adopted on an interim basis until a public hearing has been held and the judges have thereafter acted on the revisions and such action has become effective.

9. At prior meetings, the Committee considered a proposal by the Civil Task Force to amend the class action rules, suggested further changes to the proposal and asked the undersigned to incorporate those changes and submit the revised proposal to the Committee for consideration.

At this meeting, the Committee considered the revised proposal. After discussion, the Committee unanimously voted to submit to public hearing the revisions to the class action rules as set forth in Appendix E attached hereto.

Respectfully submitted,



Carl E. Testo  
Counsel to the Rules Committee

CET:pt  
Attachments

## APPENDIX A (12-15-08 mins)

### **Sec. 10-12. Service of the Pleading and Other Papers; Responsibility of Counsel or Pro Se Party: Documents and Persons to Be Served**

(a) It is the responsibility of counsel or a pro se party filing the same to serve on each other party who has appeared one copy of every pleading subsequent to the original complaint, every written motion other than one in which an order is sought ex parte and every paper relating to discovery, request, demand, claim, notice or similar paper, except a request for mediation under section 16 of Public Act 08-176. When a party is represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the judicial authority.

(b) It shall be the responsibility of counsel or a pro se party at the time of filing a motion for default for failure to appear to serve the party sought to be defaulted with a copy of the motion. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(c) Any pleading asserting new or additional claims for relief against parties who have not appeared or who have been defaulted shall be served on such parties.

COMMENTARY: Section 16 of Public Act 08-176 requires the court to notify each appearing party that a foreclosure mediation request has been submitted by the mortgagor. Requiring the mortgagor to serve a copy on each party is redundant and places an unnecessary burden on the individuals section 16 of Public Act 08-176 is intended to assist. The new language in subsection (a) addresses this.

### **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: Section 16 of Public Act 08-176 requires the court to notify each appearing party that a foreclosure mediation request has been submitted by the mortgagor. Requiring the mortgagor to file an appearance is redundant and places an unnecessary burden on the individuals section 16 of Public Act 08-176 is intended to assist. The new sentence in this section addresses this.

### **Sec. 17-20. Motion for Default and Nonsuit for Failure to Appear**

(a) Except as provided in subsection (b), [I]f 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, if 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) [b] 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) [c] 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 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) [d] 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) [e] 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: A new subsection (b) has been added to adopt the provisions of section 16 of Public Act 08-176.

#### **Sec. 10-8. Time to Plead**

Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall first advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of fifteen days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the initial time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that there is good cause to suspend such time requirements. The filing of a request for mediation under section 16 of Public Act 08-176 shall suspend the time requirements of this section until the mediation period has expired or otherwise terminated.

COMMENTARY: The new sentence suspends the usual pleading deadlines for mortgagors participating in good faith in the foreclosure mediation program established by section 16 of Public Act 08-176.

## APPENDIX B (12-15-08 mins)

### Sec. 2-15A. — Authorized House Counsel

#### (a) Purpose

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

#### (b) Definitions

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

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

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

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

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

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

#### (c) Activities

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

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

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

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



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

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

(4) **Limitation on Opinions to Third Parties.**

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

(d) **Registration**

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

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

(B) a sworn statement by the applicant:

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

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

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

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

(C) a certificate from an organization certifying that it is qualified as set forth in subsection (b) (2); that it is aware that the applicant is not licensed to practice law in

Connecticut; and that the applicant is employed or about to be employed in Connecticut by the organization as set forth in subsection (b) (1) (D);

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

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

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

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

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

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

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

(1) **Cessation of Authorization to Perform**

**Services.** Authorization to perform services under this rule shall cease upon the earliest of the following events:

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

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

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

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

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

(2) **Notice of Withdrawal of Authorization.** Upon receipt of the notice required by subsection

(e) (1), the bar examining committee shall forward a request to the statewide bar counsel that the authorization under this chapter be revoked. Notice of the revocation shall be mailed by the statewide bar counsel to the authorized house counsel and the organization employing the authorized house counsel.

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

(f) **Discipline**

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

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

(g) **Transition**

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

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

COMMENTARY: The above change adds employer sponsored benefit plans to the definition of "organizations."

# Appendix C (12-15-08 mins)

1. Applications for authority to certify lawyers as specialists in a certain field or fields of law shall be made in writing on such application forms as are adopted by the Legal Specialization Screening Committee and approved by the Rules Committee of the Superior Court.

*Judicial Branch, Legal Services Unit,*

2. Such application forms shall be on file in the office of the Chairman of such Committee and shall be available on written request addressed to the Chairman of such Committee.

*c/o Director of Legal Services, Judicial  
Branch, State of Connecticut, P.O. Box 150474, Hartford, Connecticut 06115-0474*

3. Completed application forms shall be submitted to the Chairman of the Legal Specialization Screening Committee, c/o Director of Legal Services, Judicial Department, State of Connecticut, ~~Drawer N, Station A~~, Hartford, Connecticut 06106.

*1 Branch P.O. Box 150474  
A 06115-0474*

4. In addition to the information required in such application forms, the Legal Specialization Screening Committee may require such additional information and undertake such investigation of the applicant as it deems necessary to carry out its duties.

5. The Legal Specialization Screening Committee shall submit to the Rules Committee of the Superior Court a written recommendation, with reasons therefor, for approval or disapproval of each application or for the termination of any prior approval granted by the Rules Committee.

APPLICATION FOR AUTHORITY

TO CERTIFY LAWYERS

AS SPECIALISTS

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Applicant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Website Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date: \_\_\_\_\_

A. Complete the following:

1. Full legal name of applicant

*Mailing*  
2. Address of applicant  
*1<sup>a</sup> e-mail address and website address*

3. Telephone number of applicant

4. Name, *mailing* address and *e-mail address and* telephone number of person to contact regarding application  
*1 1 1*

5. State whether applicant is a sole proprietorship, a partnership, a corporation or a voluntary association.

6. If the applicant is a sole proprietorship, state:

(a) the date on which the proprietorship was formed

(b) the city or town and state in which it is registered as doing business

(c) the name, address and telephone number of the proprietor

**APPENDIX D (12-15-08 mins)**

**CHAPTER 30a  
DELINQUENCY, FAMILY WITH SERVICE NEEDS  
AND YOUTH IN CRISIS HEARINGS**

**Sec. 30a-1. Initial Plea Hearing**

(a) The judicial authority shall begin the hearing by determining whether all necessary parties are present and that the rules governing service or notice for nonappearing parties have been complied with, and shall note these facts for the record. The judicial authority shall then inform the parties of the substance of the petition or information.

(b) In age appropriate language, the judicial authority prior to any plea shall advise the child or youth and parent or guardian of the following rights:

(1) That the child or youth is not obligated to say anything and that anything that is said may be used against the child or youth.

(2) That the child or youth [and the parent or guardian] is entitled to the services of an attorney and that if the child or youth [or] and the parent or parents, or guardian [is] are unable to [pay,] afford an attorney for the child or youth, an application for a public defender or [court-appointed] an attorney appointed by the Chief Child Protection Attorney should be completed and filed with the office of the public defender or the clerk of the court to request an attorney without cost.

(3) That the child or youth will not be questioned unless he or she consents, that the child or youth can consult with an attorney before being questioned and may have an attorney present during questioning, and that the child or youth can stop answering questions at any time.

(4) That the child or youth has the right to a trial and the rights of confrontation and cross-examination of witnesses.

(c) Notwithstanding any prior statement acknowledging responsibility for the acts alleged, the judicial authority shall inquire of the child or youth whether the child or youth presently admits or denies the allegations of the petition or information.

(d) If the judicial authority determines that a child or youth, or the parent, parents or guardian of a child or youth are unable to afford counsel for the child or youth, the judicial

authority shall, in a delinquency proceeding, appoint the office of the public defender to represent the child, or in a family with service needs or youth in crisis proceeding, notify the Chief Child Protection Attorney, who shall assign an attorney to represent the child or youth.

(e) If the judicial authority, even in the absence of a request for appointment of counsel, determines that the interests of justice require the provision of an attorney to represent the child, youth or the child's or youth's parent or parents, guardian or other person having control of the child or youth, in any delinquency, family with service needs or youth in crisis proceeding, the judicial authority may appoint an attorney to represent any such party and shall notify the Chief Child Protection Attorney who shall assign an attorney to represent any such party. Where, under the provisions of this section, the court so appoints counsel for any such party who is found able to pay, in whole or in part, the cost thereof, the judicial authority shall assess as costs on the appropriate form against such parent or parents, guardian or other person having control of the child or youth, including any agency vested with the legal custody of the child or youth, the expense so incurred and paid by the Commission on Child Protection in providing such counsel, to the extent of their financial ability to do so in accordance with the rates established by the Commission on Child Protection for compensation of counsel.

(f) If the parent, parents or guardian of the child or youth fails to comply with a court order entered in the best interests of the child or youth and is facing potential imprisonment for contempt of court, such parent or guardian, if unable to afford counsel, shall be entitled to have counsel provided for such parent or guardian of the child or youth in accordance with subsection (e) of this section.

(g) For purposes of determining eligibility for appointment of counsel, the judicial authority shall cause the parent or guardian of a child or youth to complete a written statement under oath or affirmation setting forth the child's or youth's, or parent's, parents' or guardian's or other person's liabilities and assets, income and sources thereof, and such other information as the office of the public defender or the Commission on Child Protection shall designate and require on forms adopted by said office of the public defender or Commission on Child Protection.



COMMENTARY: Throughout this section changes are intended to adopt provisions of General Statutes § 46b-123e, as amended by Public Act 07-159, Secs. 4, 6, and 7.

The change in subsection (a) expands the language to include a party who may not need to be served, just notified.

The change in subsection (b) (2) adopts provisions of General Statutes § 46b-135(a), as amended by Public Act 07-159, Sec. 6. The change in subsection (2) (c) is made to standardize terms.

New subsection 2(d) adopts provisions of Public Act 07-159, Sec. 4(b).

New subsection 2(e) addresses the situation where the judicial authority determines that the interests of justice require appointment of counsel. This subsection adopts provisions of General Statutes § 46b-136 and Public Act 07-159, Sec. 7.

New subsection 2 (f) adopts provisions of General Statutes § 46b-135, as amended by Public Act 07-159, Sec. 6(a). New subsection (g) adopts provisions of General Statutes §46b-123e, as amended by Public Act 07-159, Sec. 4(c).

**(NEW) Sec. 30a-1A Family With Service Needs Preadjudication Continuance**

If a family with service needs petition is filed and it appears that the interest of the child or the family may be best served, prior to adjudication, by referral to community-based or other services, the judicial authority may permit the matter to be continued for a reasonable period of time not to exceed six months, which time period may be extended by an additional three months for cause. If it appears at the conclusion of the continuance that the matter has been satisfactorily resolved, the judicial authority may dismiss the petition.

COMMENTARY: This new section adopts provisions of General Statutes § 46b-149(g), as amended by June Special Session, Public Act 07-4, Sec. 30(g).

**Sec. 30a-3. —Standards of Proof; Burden of Going Forward**

(a) The standard of proof for a delinquency conviction is evidence beyond a reasonable doubt and for a family with service needs adjudication is clear and convincing evidence.

(b) The burden of going forward with evidence shall rest with the juvenile prosecutor, [or with the petitioner's counsel, as the case may be.]

COMMENTARY: The change in this section is intended to adopt provisions of General Statutes § 46b-121b(a) that provides for only the juvenile prosecutor to proceed with the petition.

**Sec. 30a-4. Plea Canvass**

To assure that any plea or admission is voluntary and knowingly made, the judicial authority shall address the child or youth in age appropriate language to determine that the child or youth substantially understands:

- (1) The nature of the charges;
- (2) The factual basis of the charges;
- (3) The possible penalty, including any extensions or modifications;

(4) That the plea or admission must be voluntary and not the result of force, threats, or promises, apart from the plea agreement;

(5) That the child or youth has (i) the right to deny responsibility or plead not guilty or to persist if that denial or plea has already been made, (ii) the right to be tried by a judicial authority and, (iii) that at trial the child or youth has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.

COMMENTARY: The change to this section is for clarification.

**Sec. 30a-5. Dispositional Hearing**

(a) The dispositional hearing may follow immediately upon a conviction or an adjudication.

(b) The judicial authority may admit into evidence any testimony which is considered relevant to the issue of the disposition, in any form the judicial authority finds of probative value, but no disposition shall be made by the judicial authority until the predispositional study, unless waived, has been submitted. A written predispositional study may be waived by the judicial authority for good cause shown upon the request of the parties, provided that the basis for the waiver and the probation officer's oral summary of

any investigation are both placed on the record. The predispositional study shall be presented to the judicial authority and copies thereof shall be provided to all counsel in sufficient time for them to prepare adequately for the dispositional hearing, and, in any event, no less than forty-eight hours prior to the date of the disposition.

(c) The prosecutor and the child or youth and parent or guardian shall have the right to produce witnesses on behalf of any dispositional plan they may wish to offer.

(d) Prior to any disposition, the child or youth shall be allowed a reasonable opportunity to make a personal statement to the judicial authority in mitigation of any disposition.

(e) The judicial authority shall determine an appropriate disposition upon conviction of a child as delinquent in accordance with General Statutes §§ 46b-140 and 46b-141.

(f) The judicial authority shall determine an appropriate disposition upon adjudication of a child from a family with service needs in accordance with General Statute § 46b-149(h).

(g) The judicial authority shall determine an appropriate disposition upon adjudication of a youth as a youth in crisis in accordance with General Statute § 46b-150f.

(h) The judicial authority shall determine the appropriate disposition upon a finding that a child adjudicated as a child from a family with service needs has violated a valid court order.

(i) The judicial authority shall determine the appropriate disposition upon a finding that a youth adjudicated as a youth in crisis has violated a valid court order.

COMMENTARY: New subsections (e), (f) and (g) clarify the specific authority for a judicial authority to enter certain case type dispositions.

Subsection (h) adopts provisions of General Statutes § 46b-149(c) and (h), as amended by June Special Session, Public Act 07-4, Sec. 32(a).

Subsection (i) adopts provisions of General Statutes § 46b-150f(c) that gives the judicial authority the authority to make and enforce orders in youth in crisis cases. Such enforcement includes the authority to adjudicate violation of court order petitions.

**(NEW) Sec. 30a-6A. —Persons in Attendance at Hearings**

Any judge hearing a juvenile matter, may during such hearing, exclude from the courtroom in which such hearing is held any person whose presence is, in the court's opinion, not necessary, except that in delinquency proceedings, any victim shall not be excluded unless, after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise.

COMMENTARY: This new section addresses victims and the exclusion of unnecessary persons in the courtroom. This section is consistent with increased transparency in the Superior Court and adopts provisions of General Statutes § 46b-122.

## APPENDIX E

### Sec. 9-8. -Class Actions Maintainable

An action may be maintained as a class action if the prerequisites of Section 9-7 are satisfied [and the judicial authority finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.], and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of: (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the part opposing the class; or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests, or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of class action.

#### Commentary to Section 9-8

The above amendments to this rule and to Section 9-9 include the provisions of Federal Rules of Civil Procedure Rule 23, with minor variations. The current rule contains some, but not all, provisions of the federal rule which creates uncertainty as to which federal cases have precedential value in Connecticut courts. Although the Connecticut Supreme Court has stated that it would look to federal cases when reviewing class action cases, Collins v. Anthem Health Plans, Inc., 266 Conn. 12, 77 (2003), class action litigation is rare in Connecticut and the resulting body of state case law is light. This amendment will enable Connecticut to access useful case law from thirty three states and the District of Columbia, all of whom have adopted Rule 23 or some variation of it.

### **Sec. 9-9. -[Dismissal or Compromise of Class Action] Procedure for Class Certification and Management of Class**

[A class action shall not be withdrawn or compromised without the approval of the judicial authority. The judicial authority may require notice of such proposed dismissal or compromise to be given in such manner as it directs.]

(a)(1)(A) When a person sues or is sued as a representative of a class, the court must, at an early practicable time, determine by order whether to certify the action as a class action.

(B) An order certifying a class action must define the class and the class claims, issues or defenses, and must appoint class counsel.

(C) An order under Section 9-10(1)(A) may be altered or amended before final judgment.

(2)(A) For any class certified under Section 9-8(1) or (2), the court must direct notice to the class.

(B) For any class certified under Section 9-8(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues or defenses;

(iv) that a class member may enter an appearance through counsel if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and

(vi) the binding effect of a class judgment on class members under Section 9-8(3).

(3) The judgment in an action maintained as a class action under Section 9-8(1) or (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Section 9-8(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Section 9-10(a)(2)(B) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of Sections 9-7 and 9-8 shall then be construed and applied accordingly.

(b) In the conduct of actions to which Sections 9-7 et seq. apply, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters.

The orders may be altered or amended as may be desirable from time to time.

(c)(1)(A) The court must approve any settlement, withdrawal, or compromise of the claims, issues, or defense of a certified class. Court approval is not required for settlement, withdrawal or compromise of a claim in which a class has been alleged but no class has been certified.

(B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, withdrawal or compromise.

(C) The court may approve a settlement, withdrawal, or compromise that would bind class members only after a hearing and on finding that the settlement, withdrawal, or compromise is fair, reasonable, and adequate.

(2) The parties seeking approval of a settlement, withdrawal, or compromise of an action in which a class has been certified must file a statement identifying any agreement made in connection with the proposed settlement, withdrawal or compromise.

(3) In an action previously certified as a class action under Section 9-8(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(4)(A) Any class member may object to a proposed settlement, withdrawal or compromise that requires court approval under (c)(1)(A).

(B) An objection made under (c)(4)(A) may be withdrawn only with the court's approval.

(d) Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.

(1) In appointing class counsel, the court must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources counsel will commit to representing the class.

(2) The court may:

(i) consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(ii) direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorneys fees and nontaxable costs; and

(iii) make further orders in connection with the appointment.

(e) The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action. When there is one applicant for appointment as class counsel the court may appoint that applicant only if the applicant is adequate under subsection (d). If more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant best able to represent the interests of the class. The order appointing class counsel may include provisions about the award of attorneys fees or nontaxable costs under subsection (f).

(f) In an action certified as a class action, the court may award reasonable attorneys fees and nontaxable costs authorized by law or by consent of the parties as follows:

(1) a request for an award of attorneys fees and nontaxable costs must be made by motion subject to the provisions of this subdivision, at a time set by the court. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its conclusions of law on such motion.

#### Commentary to Section 9-9

The above amendments to this rule and to Section 9-8 include the provisions of Federal Rules of Civil Procedure Rule 23, with minor variations. The current rule contains some, but not all, provisions of the federal rule which creates uncertainty as to which federal cases have precedential value in Connecticut courts. Although the Connecticut Supreme Court has stated that it would look to federal cases when reviewing class action cases, Collins v. Anthem Health Plans, Inc., 266 Conn. 12, 77 (2003), class action litigation is rare in Connecticut and the resulting body of state case law is light. This amendment will enable Connecticut to access useful case law from thirty three states and the District of Columbia, all of whom have adopted Rule 23 or some variation of it.