

Minutes of the Meeting
Rules Committee
December 19, 2011

On Monday, December 19, 2011, at 2:00 p.m. the Rules Committee met in the Supreme Court Courtroom from 2:00 p.m. to 3:04 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. WILLIAM M. BRIGHT, JR.
HON. JULIET L. CRAWFORD
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON

The Hon. Barbara N. Bellis and the Hon. Carl E. Taylor were not in attendance at this meeting.

Also in attendance were Carl E. Testo, Counsel to the Rules Committee, and Attorneys Denise K. Poncini and Joseph Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee approved the minutes of the November 21, 2011, meeting. Judges Keegan and Bright abstained from this vote. (Judges Sheldon and Crawford entered the meeting after the vote was taken.)

2. The Committee considered a proposal submitted by CBA President Keith Bradoc Gallant to amend Rule 1.10 of the Rules of Professional Conduct to provide a screening mechanism that would permit law firms to avoid imputed conflicts of interest triggered by attorneys making lateral moves from one law firm to another.

After discussion, the Committee unanimously voted to submit to public hearing the amendment to Rule 1.10 of the Rules of Professional Conduct as set forth in Appendix A attached hereto.

3. The Committee considered a proposal by Judge William Bright, Jr., to delete Section 37-11 and amend Sections 37-10 and 42-2 concerning two part informations.

After discussion, the Committee made further amendments to the proposal and unanimously voted to submit to public hearing the revision to Section 37-11 as set forth in Appendix B attached hereto.

4. The Committee considered a proposal submitted by Attorney Christopher G. Blanchard on behalf of the Client Security Fund Committee to amend Sections 2-70 and 2-79 to allow the judges to reduce the Client Security Fund fee and to impose a reinstatement fee on attorneys whose licenses to practice law were administratively suspended for failure to pay the Client Security Fund fee.

After discussion, the Committee further amended the proposal and voted, with Judge Prescott opposed, to submit to public hearing the revisions to Sections 2-70 and 2-79 as set forth in Appendix C attached hereto.

5. The Committee considered a submission by Attorney Mark Nordstrom with regard to allowing authorized house counsel to do pro bono work.

After discussion, the Committee unanimously voted to take no action on the matter.

6. The Committee considered a submission by Mr. Paul A. Boyne seeking articulation by the Rules Committee of the meaning of “risks” and “disadvantages” as used in Sec. 25-64 (4) in connection with a pro se appearance in a family matter.

After discussion, the Committee unanimously voted to take no action on the matter.

7. The Committee considered a proposal by Attorney Joseph Del Ciampo to amend the juvenile rules in light of § 2 of P.A. 11-240.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to the juvenile rules as set forth in Appendix D attached hereto.

8. The Committee considered a proposal by Chief Disciplinary Counsel Patricia King to amend Sections 2-37, 2-40, 2-41 and 2-52 concerning attorney discipline.

After discussion, the Committee tabled the matter and decided to invite Attorney King to attend its January meeting to address the Committee concerning her proposal.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

APPENDIX A (121911 mins)

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the [prohibited] disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9 (a) or 1.9 (b) and arises out of the disqualified lawyer's association with a prior firm, and

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

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

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

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

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

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

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

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

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

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

The Rule in subsection (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does subsection (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the

person did while a law student. Such persons, however, must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0 (k) and 5.3.

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

Rule 1.10 (c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7 (b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7 and its Commentary. For a definition of informed consent, see Rule 1.0 (f). Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11 (d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

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

AMENDMENT NOTE: The above change provides a screening mechanism that will permit law firms to avoid imputed conflicts of interest triggered by attorneys making lateral moves from one law firm to another.

APPENDIX B (121911 mins)

Sec. 37-11. —[Role of Clerk] Notice to Defendant when Information in Two Parts

Prior to the time the defendant enters a guilty plea or, if the defendant pleads not guilty, prior to the commencement of trial, the [clerk] court shall notify the defendant[, in the absence of the judicial authority,] of the contents of the second part of the information. The clerk shall enter on the docket the time and place of the giving of such notification and, where necessary, shall include entry thereof in the judgment file.

COMMENTARY: The trial judge should know about the second part of the information prior to trial. The above change provides for this.

APPENDIX C (12-19-11 mins)

Sec. 2-70. —Client Security Fund Fee

(a) The judges of the superior court shall assess an annual fee in an amount adequate for the proper payment of claims and the provision of crisis intervention and referral assistance under these rules and the costs of administering the client security fund. Such fee, which [the judges of the superior court have set at \$110] shall be \$75.00, shall be paid by each attorney admitted to the practice of law in this state and each judge, judge trial referee, state referee, family support magistrate, family support referee and workers' compensation commissioner in this state. Notwithstanding the above, an attorney who is disbarred, retired, resigned, or serving on active duty with the armed forces of the United States for more than six months in such year shall be exempt from payment of the fee, and an attorney who does not engage in the practice of law as an occupation and receives less than \$450 in legal fees or other compensation for services involving the practice of law during the calendar year shall be obligated to pay one-half of such fee. No attorney who is disbarred, retired or resigned shall be reinstated pursuant to Sections 2-53 or 2-55 until such time as the attorney has paid the fee due for the year in which the attorney retired, resigned or was disbarred.

(b) An attorney or family support referee who fails to pay the client security fund fee in accordance with this section shall be administratively suspended from the practice of law in this state pursuant to Section 2-79 of these rules until such payment, along with a reinstatement fee of \$75.00, has been made. An attorney or family support referee who is under suspension for another reason at the time he or she fails to pay the fee, shall be the subject of an additional suspension which shall continue until the fee is paid.

(c) A judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner who fails to pay the client security fund fee in accordance with this section shall be referred to the judicial review council.

COMMENTARY: The above change would reduce the Client Security Fund fee to \$75.00 and require that an additional \$75.00 fee be paid by an attorney who was administratively suspended pursuant to Section 2-79 (a) before the attorney may be reinstated.

Sec. 2-79. —Enforcement of Payment of Fee

(a) The client security fund committee shall send a notice to each attorney who has not paid the client security fund fee pursuant to Section 2-70 of these rules that the attorney's license to practice law in this state may be administratively suspended unless within sixty days from the date of such notice the client security fund committee receives from such attorney proof that he or she has either paid the fee or is exempt from such payment. If the client security fund committee does not receive such proof within the time required, it shall cause a second notice to be sent to the attorney advising the attorney that he or she will be referred to the superior court for an administrative suspension of the attorney's license to practice law in this state unless within thirty days from the date of the notice proof of the payment of the fee or exemption is received. The client security fund committee shall submit to the clerk of the superior court for the Hartford Judicial District a list of attorneys who did not provide proof of payment or exemption within thirty days after the date of the second notice. Upon order of the court, the attorneys so listed and referred to the clerk shall be deemed administratively suspended from the practice of law in this state until such time as payment of the fee and the reinstatement fee assessed pursuant to Section 2-70 is made, which suspension shall be effective upon publication of the list in the Connecticut Law Journal. An administrative suspension of an attorney for failure to pay the client security fund fee shall not be considered discipline, but an attorney who is placed on administrative suspension for such failure shall be ineligible to practice law as an attorney admitted to practice in this state, and shall not be considered in good standing pursuant to Section 2-65 of these rules until such time as the fee is paid. An attorney aggrieved by an order placing the attorney on administrative suspension for failing to pay the client security fund fee may make an application to the superior court to have the order vacated, by filing the application with the superior court for the Hartford Judicial District within thirty days of the date that the order is published, and mailing a copy of the same by certified mail, return receipt requested, to the office of the client security fund committee. The application shall set forth the reasons why the application should be granted. The court shall schedule a hearing on the application, which shall be limited to whether good cause exists to vacate the suspension order.

(b) If a judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner has not paid the client security fund fee, the office of the chief court administrator shall send a notice to such person that he or she will be referred to the judicial review council unless within sixty days from the date of such notice the office of the chief court administrator receives from such person proof that he or she has either paid the fee or is exempt from such payment. If the office of the chief court administrator does not receive such proof within the time required, it shall refer such person to the judicial review council.

(c) Family support referees shall be subject to the provisions of subsection (a) herein until such time as they come within the jurisdiction of the judicial review council, when they will be subject to the provisions of subsection (b).

(d) The notices required by this section shall be sent by certified mail, return receipt requested or with electronic delivery confirmation to the last address registered by the attorney pursuant to Section 2-26 and Section 2-27 (d), and to the home address of the judge, judge trial referee, state referee, family support magistrate, family support referee or workers' compensation commissioner.

COMMENTARY: The above change is made in light of the proposed revisions to Section 2-70.

APPENDIX D (121911)

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

**CHAPTER 34a
PLEADINGS, MOTIONS AND DISCOVERY NEGLECTED, ABUSED AND UNCARED FOR
[AND DEPENDENT] CHILDREN AND TERMINATION OF PARENTAL RIGHTS**

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

Sec. 6-3. —Preparation; When; By Whom; Filing

(a) Judgment files in civil, criminal, family and juvenile cases shall be prepared when: (1) an appeal is taken; (2) a party requests in writing that the judgment be incorporated into a judgment file; (3) a judgment has been entered involving the granting of a dissolution of marriage or civil union, a legal separation, an annulment, injunctive relief, or title to property (including actions to quiet title but excluding actions of foreclosure), except in those instances where judgment is entered in such cases pursuant to Section 14-3 and no appeal has been taken from the judicial authority's judgment; (4) a judgment has been entered in a juvenile matter involving allegations that a child has been neglected, abused, or uncared for, [dependent,] or involving termination of parental rights, commitment of a delinquent child or commitment of a child from a family with service needs; (5) in criminal cases, sentence review is requested; or (6) ordered by the judicial authority.

(b) Unless otherwise ordered by the judicial authority, the judgment file in juvenile cases shall be prepared by the clerk and in all other cases, in the clerk's discretion, by counsel or the clerk. As to judgments of foreclosure, the clerk's office shall prepare a certificate of judgment in accordance with a form prescribed by the chief court administrator only when requested in the event of a redemption.

(c) Judgment files in family cases shall be filed within sixty days of judgment.

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

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

(a) (1) "Child" means any person under sixteen years of age, except that (A) for purposes of delinquency matters and proceedings, "child" means any person (i) under seventeen years of age who has not been legally emancipated or, (ii) seventeen years of age or older who, prior to attaining seventeen years of age, has committed a delinquent act and, subsequent to attaining seventeen years of age, (i) violates any order of a judicial authority or any condition of probation ordered by a judicial authority with respect to such delinquency proceeding; or (ii) willfully fails to appear in response to a summons under General Statutes § 46b-133, with respect to such delinquency proceeding, and (B) for purposes of family with service needs matters and proceedings, child means a person under seventeen years of age; (2) "Youth" means any person sixteen or seventeen years of age who has not been legally emancipated; (3) "Youth in crisis" means any seventeen year old youth who, within the last two years, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode; (B) is beyond the control of the youth's parents, guardian or other custodian; or (c) has four unexcused absences from school in any one month or ten unexcused absences in any school year; (4) the definitions of the terms "abused," "mentally deficient," "delinquent," "delinquent act," ["dependent,"] "neglected," "uncared for," "alcohol-dependent child," "family with service needs," "drug-dependent child," "serious juvenile offense," "serious juvenile offender," and "serious juvenile repeat offender" shall be as set forth in General Statutes § 46b-120. (5) "Indian child" means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe and is involved in custody proceedings, excluding delinquency proceedings.

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

(c) "Complaint" means a written allegation or statement presented to the judicial authority that a child's or youth's conduct as a delinquent or situation as a child from a family

with service needs or youth in crisis brings the child or youth within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

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

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

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

(g) "Hearing" means an activity of the court on the record in the presence of a judicial authority and shall include (1) "Adjudicatory hearing": A court hearing to determine the validity of the facts alleged in a petition or information to establish thereby the judicial authority's jurisdiction to decide the matter which is the subject of the petition or information; (2) "Contested hearing on an order of temporary custody" means a hearing on an ex parte order of temporary custody or an order to appear which is held not later than ten days from the day of a preliminary hearing on such orders. Contested hearings shall be held on consecutive days except for compelling circumstances or at the request of the respondent; (3) "Dispositive hearing": The judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition or information having been established, a court hearing in which the judicial authority, after considering the social study or predispositional study and the total circumstances of the child or youth, orders whatever action is in the best interests of the child, youth or family and, where applicable, the community. In the discretion of the judicial authority, evidence concerning adjudication and disposition may be presented in a single hearing. (4) "Preliminary hearing" means a hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child or youth is uncared for, abused, or neglected[, or dependent]. A preliminary hearing on any ex parte custody order or order to appear shall be held not later than ten days from the issuance of the order. (5)

“Plea hearing” is a hearing at which (i) a parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights, admits, denies, or pleads nolo contendere to allegations contained in the petition; or (ii) a child or youth who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition, or a hearing at which a child or youth who is a named respondent in a family with service needs or youth in crisis petition admits or denies the allegations contained in the petition upon being advised of the allegations.

(h) “Parent” means a biological mother or father or adoptive mother or father except a biological or adoptive mother or father whose parental rights have been terminated; or the father of any child or youth born out of wedlock, provided at the time of the filing of the petition (1) he has been adjudicated the father of such child or youth by a court which possessed the authority to make such adjudication, or (2) he has acknowledged in writing to be the father of such child or youth, or (3) he has contributed regularly to the support of such child, or (4) his name appears on the birth certificate, or (5) he has filed a claim for paternity as provided under General Statutes § 46b-172a, or (6) he has been named in the petition as the father of the minor child or youth by the mother.

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

(j) “Permanency plan” means a plan developed by the commissioner of the department of children and families for the permanent placement of a child or youth in the commissioner’s

care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110 (b), 17a-111b (c), 46b-129 (k), 46b-141, and 46b-149 (j).

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

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

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

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

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

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

(q) "Supervision" includes: (1) "Nonjudicial supervision": a legal status without the filing of a petition or a court conviction or adjudication but following the child's admission to a complaint wherein a probation officer exercises supervision over the child with the consent of the child and the parent; (2) "Protective supervision": a disposition following adjudication in

neglected, abused or uncared for [or dependent] cases created by an order of the judicial authority requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child or youth when the child's or youth's place of abode remains with the parent or any suitable or worthy person, or when the judicial authority vests custody or guardianship in another suitable and worthy person, subject to the continuing jurisdiction of the court; and (3) "Judicial supervision": a legal status similar to probation for a child adjudicated to be from a family with service needs or subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or § 46b-133e.

(r) "Take into Custody Order" means an order by a judicial authority that a child be taken into custody and immediately turned over to a detention superintendent where probable cause has been found that the child has committed a delinquent act, there is no less restrictive alternative available, and the child meets the criteria set forth in Section 31a-13.

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

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

(a) At the first hearing in which the parents or guardian appear, the judicial authority shall advise and explain to the parents or guardian of a child or youth their right to silence and to counsel.

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

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

authority.

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

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

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

(g) Notices of initial hearings on petitions, shall contain a statement of the respondent's right to counsel and that if the respondent is unable to afford counsel, counsel will be appointed to represent the respondent, that the respondent has a right to refuse to make any

statement and that any statement the respondent makes may be introduced in evidence against him or her.

(h) Any confession, admission or statement, written or oral, made by the parent or parents or guardian of the child or youth after the filing of a petition alleging such child or youth to be neglected, abused or uncared for [or dependent], shall be inadmissible in any proceeding held upon such petition against the person making such admission or statement unless such person shall have been advised of the right to retain counsel, and that if such person is unable to afford counsel, counsel will be assigned to provide representation, that such person has a right to refuse to make any statement and that any statements such person makes may be introduced in evidence against such person.

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

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

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

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

(d) A summons accompanying any petition filed with an application for order of temporary custody shall be served by the petitioner on the respondents and provided to the

office of the attorney general as soon as practicable after the issuance of any ex parte order or order to appear, along with such order, any sworn statements supporting the order, the summary of facts, the specific steps provided by the judicial authority, and the notice required by Section 33a-6.

(e) Whenever the commissioner of the department of children and families obtains an ex parte order of temporary custody or an order to appear and show cause from the judicial authority, he or she shall provide the clerk with a sealed envelope marked "Attention: Counsel for Child(ren)" containing the following information: the name, phone number and e-mail of the investigation social worker; the name, phone number and e-mail of the treatment supervisor or social worker, if known; and the child(ren)'s placement or home address and phone number, and name of a placement contact person. The clerk shall ensure that counsel assigned to the child is provided with said envelope at the time his or her appearance is filed. In the event the placement information changes prior to the preliminary hearing, the commissioner of the department of children and families shall notify counsel for the child immediately.

Sec. 35a-1. Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere

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

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

Sec. 35a-3. Coterminous Petitions

When coterminous petitions are filed, the judicial authority first determines by a fair

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

COMMENTARY: The revisions to the chapter heading for Chapters 32a, 34a and 35a, and the revisions to Sections 6-3, 26-1, 32a-1, 33a-2, 35a-1 and 35a-3 are consistent with the changes made to the General Statutes affected by section 2 of Public Act 11-240 concerning juvenile matters.