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CONNECTICUT REPORTS

Vol. 344

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

STATE OF CONNECTICUT *v.* JUAN F.*
(SC 20385)

Robinson, C. J., and McDonald, D'Auria, Mullins, Kahn, Ecker and Keller, Js.

Syllabus

Convicted of sexual assault in the first degree and risk of injury to a child, the defendant appealed to this court, claiming that the trial court had improperly denied his pretrial motion to dismiss for failure to prosecute within the five year limitation period set forth in the applicable statute of limitations ((Rev. to 2001) § 54-193a). In 2001, the defendant moved from his mother's home in Puerto Rico to a home in Hartford, where his uncle, R, R's girlfriend, B, and B's minor child, P, resided. In October,

* In accordance with our policy of protecting the privacy interests of the victims of sexual assault and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

2001, P reported to R and B that the defendant had sexually assaulted her, and B immediately informed the defendant that he could not stay with them anymore. The police were contacted, and, in November, 2001, they obtained a warrant for the defendant's arrest. When the police attempted to execute the warrant, R and B informed them that the defendant had left Connecticut and was living in Puerto Rico. R and B did not provide the police with the defendant's address in Puerto Rico or the name of the city or town in which he was residing, and R and B did not share that the defendant was residing with his mother. The defendant continued to reside in Puerto Rico from 2001 until 2017, with the exception of a brief period of time during 2010, when he lived in California. The defendant kept a low profile during those sixteen years, as he did not have a driver's license, pay taxes, maintain legitimate employment, or appear on any lease or rental agreement. In May, 2017, the defendant moved from Puerto Rico to Rochester, New York, and, within one month, the defendant was arrested on unrelated charges. The defendant ultimately was returned to Connecticut, and the police served him with the arrest warrant in June, 2017. In support of his motion to dismiss, the defendant contended that, although the arrest warrant had been issued within the applicable five year limitation period, the police did not execute it without unreasonable delay, there having been a sixteen year gap between the issuance of the warrant in 2001 and the execution of the warrant in 2017, and, therefore, that the limitation period was not tolled. In denying the defendant's motion, the trial court concluded that the defendant had failed to demonstrate his availability for arrest during the period between the issuance and the execution of the warrant. On appeal from the judgment of conviction, *held* that the trial court properly denied the defendant's motion to dismiss, as that court's finding that the defendant was not available for arrest during the relevant time period was not clearly erroneous: the defendant did not challenge on appeal, and there was evidence in the record to support, the trial court's findings that the defendant abruptly departed Hartford for Puerto Rico when P made her accusation, the defendant already had relocated by the time the police secured a warrant for his arrest, for almost the entirety of the next sixteen years, the defendant remained in Puerto Rico, during those sixteen years, the defendant led an existence that could be characterized as off the grid, and that these certainly were circumstances that made the defendant difficult to apprehend; moreover, the defendant failed to present any evidence to suggest that his address or other identifying information would have appeared in a public database, and, even if R and B did know the defendant's whereabouts, as the defendant claimed, they never shared that information with the police; furthermore, there was no merit to the defendant's claim that his availability for arrest was established insofar as he did not go to Puerto Rico in order to evade prosecution, as the trial court did not credit the defendant's testimony that he left for Puerto Rico

because he was forced to leave R and B's home in Hartford and had no other place to live, and the court found that the defendant's decision to leave Hartford was based, at least in part, on his efforts to avoid prosecution; accordingly, because the defendant did not satisfy his burden of establishing that he was available for arrest, the trial court correctly determined that the burden did not shift to the state to show the reasonableness of the delay in executing the defendant's arrest warrant.

Argued February 24—officially released July 12, 2022

Procedural History

Substitute information charging the defendant with three counts of the crime of sexual assault in the first degree and one count of the crime of risk of injury to a child, brought to the Superior Court in the judicial district of Hartford, where the court, *Gold*, *J.*, denied the defendant's motion to dismiss; thereafter, the case was tried to the jury before *Gold*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

Robert L. O'Brien, assigned counsel, with whom, on the brief, was *Christopher Y. Duby*, assigned counsel, for the appellant (defendant).

Thadius L. Bochain, deputy assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *Debra A. Collins*, senior assistant state's attorney, for the appellee (state).

Opinion

MULLINS, J. The defendant, Juan F., was convicted, after a jury trial, of three counts of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (2), and one count of risk of injury to a child in violation of General Statutes (Rev. to 2001) § 53-21 (a) (2). On appeal,[1] the defendant claims that the trial court improperly denied his pretrial motion to dismiss for failure to prosecute him within the five year limitation

[1] The defendant appealed directly to this court pursuant to General Statutes § 51-199 (b) (3).

period set forth in General Statutes (Rev. to 2001) § 54-193a.[2] Specifically, the defendant asserts that, although the court issued a warrant for his arrest within the statute of limitations, the police did not execute the warrant until nearly sixteen years after its issuance. As a result, the defendant argues, the warrant was not executed without unreasonable delay. See, e.g., *State* v. *Crawford*, 202 Conn. 443, 450–51, 521 A.2d 1034 (1987) ("an arrest warrant, when issued within the time limitations . . . must be executed without unreasonable delay"). Therefore, the defendant asserts, the statute of limitations was not tolled, and the trial court should have granted his pretrial motion to dismiss the charges against him. We disagree and, accordingly, affirm the judgment of the trial court.

The following facts and procedural history are relevant to the resolution of this appeal. In early 2001, the defendant moved from Puerto Rico to Hartford. Prior to moving to Hartford, the defendant had been living with his mother in Puerto Rico. When he arrived in Connecticut, he moved into a home with his maternal uncle, R, his uncle's girlfriend, B, and B's six year old daughter, P. The defendant was approximately twenty-one years old.

Around midnight on October 19, 2001, P reported to R and B that the defendant had sexually assaulted her. Upon hearing this allegation, R and B immediately went into the living room of the residence and confronted the defendant with the allegations. In the defendant's

[2] General Statutes (Rev. to 2001) § 54-193a provides in relevant part: "[N]o person may be prosecuted for any offense involving sexual abuse, sexual exploitation or sexual assault of a minor except . . . within five years from the date the victim notifies any police officer or state's attorney acting in his official capacity of the commission of the offense . . . provided in no event shall such period of time be less than five years after the commission of the offense."

The parties do not dispute that this is the applicable statute of limitations.

presence, P repeated the allegations. The defendant denied the allegations. P responded, "[y]es, you did." B became visibly upset and informed the defendant that he was no longer welcome in their home. After learning of the allegations, B's brothers assaulted the defendant. By November, 2001, the defendant returned to his mother's home in Puerto Rico.

The Hartford police were contacted, and, within days of the disclosure, the police began an investigation. Shortly thereafter, on November 19, 2001, Mark Fowler, a detective with the Hartford Police Department, obtained a warrant for the defendant's arrest. When Fowler attempted to execute the warrant, he was informed by R and B that the defendant had left Connecticut and was living in Puerto Rico. Although Fowler attempted to get the defendant's address in Puerto Rico, neither R nor B was willing or able to provide him with the defendant's address or the name of the town in which he was residing. They did not share with Fowler that the defendant was residing with his mother in Puerto Rico.

Nevertheless, the trial court expressly found that Fowler prepared and disseminated a poster, indicating that the defendant was wanted by the Hartford Police Department. In addition, Fowler searched the state motor vehicle records, looking for any information related to the defendant's whereabouts. Fowler also conducted an electronic search for the defendant in the Hartford Police Department's local, in-house computer database. The searches yielded no results. Thereafter, Fowler entered the defendant's arrest warrant into the National Crime Information Center (NCIC) database, a national database administered by the Federal Bureau of Investigation and utilized by law enforcement, so that other law enforcement agencies would become aware that the defendant was subject to an outstanding warrant.

The defendant continued to reside in Puerto Rico from 2001 until 2017, with the exception of eight months, during

2010, when he lived in California. During that entire approximately sixteen year period, the defendant did not have a driver's license, did not pay any type of taxes, did not have a job for which taxes were withheld, and did not appear on any lease or other rental agreement. The trial court found that the defendant did not present any evidence to demonstrate that he was "a registered voter, a bank customer, a recipient of public benefits, an account holder with any utility company, or anything else of a similar nature."

While living in Puerto Rico, the defendant was arrested and eventually convicted on two separate occasions. Once, in 2003, he was arrested and convicted of stealing a car. As a result, he was incarcerated from 2003 through 2005. Thereafter, in 2006, the defendant was arrested and convicted of a home burglary. As a result of that conviction, he was incarcerated from 2006 through 2009. For reasons that are not clear, the Hartford police were never notified of the defendant's arrests or convictions despite having entered the defendant's arrest warrant into the NCIC database.

In May, 2017, the defendant moved from Puerto Rico to Rochester, New York. Within one month, the defendant was arrested in Rochester on charges unrelated to the present case. Presumably after finding the defendant's outstanding warrant in the NCIC database, Rochester police also charged the defendant with being a fugitive from justice. The defendant ultimately was returned to Connecticut, and the Hartford police served him with the arrest warrant on June 5, 2017.

Upon his return to Connecticut, the state charged the defendant with three counts of sexual assault in the first degree and one count of risk of injury to a child. The case was tried to a jury, which found the defendant guilty on all counts. The trial court rendered a judgment of conviction in accordance with the jury's verdict and sen-

tenced the defendant to a total effective sentence of thirty years of incarceration, execution suspended after seventeen years, ten years mandatory minimum, followed by twenty years of probation. This direct appeal followed. Additional relevant facts and procedural history will be set forth as necessary.

We begin by setting forth the applicable standard of review and certain legal principles that govern a statute of limitations defense. "Statutes of limitation[s] are generally considered an affirmative defense which must be proved by [a criminal] defendant by a preponderance of the evidence. . . . An affirmative defense is presented in the orderly course of a criminal trial after the prosecution has presented its case-in-chief. . . . Practice Book § 41-8 (3)[3] provides, however, that a defendant may also raise the statute of limitations defense in a pretrial motion to dismiss." (Citation omitted; footnote altered; internal quotation marks omitted.) *State* v. *Ward*, 306 Conn. 698, 706–707, 52 A.3d 591 (2012).

This court previously has concluded that, "[w]hen an arrest warrant has been issued, and the prosecutorial official has promptly delivered it to a proper officer for service, he has done all he can under our existing law to initiate prosecution and to set in motion the machinery that will provide notice to the accused of the charges against him. When the prosecutorial authority has done everything possible within the period of limitation to evidence and effectuate an intent to prosecute, the statute of limitations is tolled. . . . We also recognized, however, that some limit as to when an arrest warrant must be executed after its issuance is necessary in order to prevent the disadvantages to an accused attending stale

[3] Practice Book § 41-8 provides in relevant part: "The following defenses or objections, if capable of determination without a trial of the general issue, shall, if made prior to trial, be raised by a motion to dismiss the information:

* * *

"(3) Statute of limitations . . . ."

prosecutions, a primary purpose of statutes of limitation[s]. . . . Accordingly, we determined that, in order to toll the statute of limitations, an arrest warrant, when issued within the time limitations [specified by statute], must be executed without unreasonable delay. . . . In reaching that determination, we expressly declined [to] adopt a per se approach as to what period of time to execute an arrest warrant is reasonable. A reasonable period of time is a question of fact that will depend on the circumstances of each case. If the facts indicate that an accused consciously eluded the authorities, or for other reasons was difficult to apprehend, these factors will be considered in determining what time is reasonable. If, on the other hand, the accused did not relocate or take evasive action to avoid apprehension, failure to execute an arrest warrant for even a short period of time might be unreasonable and fail to toll the statute of limitations." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Swebilius*, 325 Conn. 793, 802–803, 159 A.3d 1099 (2017), quoting *State* v. *Crawford*, supra, 202 Conn. 450–51.

We have adopted a two step test to determine whether an arrest warrant was executed without unreasonable delay. Specifically, in *Swebilius*, we held that, "once [a] defendant has demonstrated his availability for arrest, he has done all that is required to carry his burden; the burden then shifts to the state to demonstrate that any period of delay in executing the warrant was not unreasonable." *State* v. *Swebilius*, supra, 325 Conn. 804. "When a defendant presents evidence that [he] was not elusive, was available and was readily approachable . . . [he] has discharged [his] burden under *Crawford*." (Citation omitted; internal quotation marks omitted.) Id., 804–805.

"Once the defendant has presented evidence of his availability for arrest, it is reasonable and proper that the burden should then shift to the state to explain why, notwithstanding the defendant's availability during the

statutory period, the delay in his arrest was reasonable. Doing so allocates burdens efficiently by requiring each party to bring forth evidence uniquely within its knowledge. Such a burden shifting model is also consistent with the distribution of burdens with respect to other affirmative defenses in Connecticut, few of which require a defendant to present affirmative evidence of matters beyond his personal ken. To dispense with that model . . . would needlessly impose a significant burden on the defendant—and the judicial system—when the state is in a far better position to determine what efforts were undertaken to ensure the defendant's prompt arrest." (Footnote omitted.) Id., 807–808.

It is axiomatic that, "[i]n reviewing a motion to dismiss, appellate courts exercise plenary review over the trial court's ultimate legal conclusions, even as the facts underlying the decision are reviewed only for clear error." Id., 801 n.6. In the present case, the trial court denied the defendant's motion to dismiss on the ground that the defendant had failed to demonstrate his availability during the statutory period. The finding of availability is a factual finding in this context. See, e.g., id., 807 (referring to availability issue as factual finding by trial court). Indeed, this court has explained that, "if the defendant can demonstrate his availability during the statutory period, the state must make some effort to serve the arrest warrant before the relevant statute of limitations expires, or to offer some evidence explaining why its failure to do so was reasonable under the circumstances. . . . That fact sensitive determination, however, is a matter properly within the reasoned judgment of the fact finder." (Footnote omitted.) Id., 814–15. Accordingly, we review the trial court's finding that the defendant was unavailable for clear error.

A trial court's factual finding constitutes clear error "when there is no evidence in the record to support [the court's finding of fact], or when, although there is

evidence to support the factual finding, the reviewing court, upon consideration of the entire record, is left with a definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *State* v. *Wang*, 323 Conn. 115, 129, 145 A.3d 906 (2016), cert. denied, U.S. , 137 S. Ct. 1069, 197 L. Ed. 2d 188 (2017). "[W]e give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass [on] the credibility of witnesses." (Internal quotation marks omitted.) *State* v. *Campbell*, 328 Conn. 444, 487, 180 A.3d 882 (2018).

Here, the trial court expressly found that, "[f]ar from having demonstrated that [the defendant] was 'not elusive, was available and was readily approachable'; [internal quotation marks omitted] [*State* v.] *Swebilius*, supra, 325 Conn. 805; the defendant's testimony evidenced the contrary: that he abruptly departed from Hartford when . . . the accusation against him was made, and he never returned." In support of that finding, the trial court explained that "[t]he undisputed evidence in this case shows that the defendant already had relocated out-of-state by the time the police had secured a warrant for his arrest. For essentially the entirety of the next sixteen years, the defendant remained in Puerto Rico, far from the police department seeking his apprehension. Then, within thirty days of his 2017 arrival in Rochester, the defendant was located by New York authorities, extradited to Connecticut, and promptly served with the warrant."

The trial court further found that, "throughout that sixteen year period, the defendant led an existence that might once have been described as being 'under the radar,' and might now, under more current parlance, be characterized as 'off the grid.' By his own admission, at no point between 2001 until 2017 did the defendant ever hold a driver's license, pay any type of taxes, main-

tain legitimate (as opposed to under the table) employment, or appear on any lease or other rental agreement." These are certainly circumstances that made the defendant difficult to apprehend. The trial court also found that the defendant failed to produce "any evidence suggesting that his address or other personal identifying information would have appeared in any other public database . . . ." The defendant does not challenge any of these findings on appeal, and there is evidence in the record to support them.

Instead, the defendant asserts that R and B would have known his location and have been able to locate him because he was living with his mother in her home, which is where he had lived prior to moving to Hartford. But, even if R and B did know the defendant's whereabouts, they never shared that information with the Hartford police. Even after Fowler sought their help in locating the defendant, neither R nor B relayed to him that the defendant was residing with his mother or the town in which his mother resided.

In fact, on this point, the trial court found that "Fowler learned from [R] and [B] that the defendant had left Connecticut and was living in Puerto Rico. Fowler attempted to get more detailed information from these individuals as to the defendant's specific address in Puerto Rico, but neither was . . . able or willing to provide it. Fowler therefore did not know the specific town or city in Puerto Rico to which the defendant had relocated . . . [or] even that the defendant was residing there with his mother." Indeed, the trial court noted that "Fowler testified that [R] had not been forthcoming." Aside from suggesting that Fowler should have been able to locate the defendant in Puerto Rico—simply because R and B allegedly knew his whereabouts—the defendant does not challenge these findings as clearly erroneous, and we conclude that there is evidence in the record to support them.

Rather than challenging the trial court's findings, the defendant claims that his availability also was established because he did not go to Puerto Rico in order to evade prosecution but, instead, simply returned home to Puerto Rico when he was kicked out of R's house in Hartford. In doing so, the defendant misapprehends the governing law. As we explained previously in this opinion, a statute of limitations defense is an affirmative defense, which the defendant has the burden of proving by a preponderance of the evidence. See, e.g., *State* v. *Ward*, supra, 306 Conn. 706–707. Indeed, even the burden shifting framework we adopted in *Swebilius* places the initial burden on the defendant to prove that he was "not elusive, was available and was readily approachable . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Swebilius*, supra, 325 Conn. 805.

In the present case, the defendant testified that he returned home to live with his mother in Puerto Rico and that he continued to live in Puerto Rico for the majority of the sixteen years leading up to his eventual arrest for the crimes at issue in this appeal. The trial court did not credit his testimony that his intent in returning home was simply based on the fact that he was kicked out and had no place to live. Instead, the trial court found that the defendant "abruptly departed from Hartford when (and because) the accusation against him was made, and he never returned." The trial court also found, and the defendant does not dispute, that "[the defendant's] testimony was devoid of any evidence suggesting that his address or other personal identifying information would have appeared in any other public database because of his status, at any time, as, for example, a registered voter, a bank customer, a recipient of public benefits, an account holder with any utility company, or anything else of a similar nature." The trial court further found that "the defen-

dant's decision to leave and [to] stay away from Hartford was based, at least in part, on his intent to avoid prosecution . . . ." On the basis of these factual findings, which are based on substantial evidence in the record, we cannot conclude that the defendant established his availability.

Moreover, as the trial court acknowledged, our case law does not require that the state establish that the defendant left the state in order to avoid prosecution. Instead, it is clear that, once a defendant asserts that his prosecution is barred by the applicable statute of limitations, he has the burden of demonstrating that he was "not elusive, was available and was readily approachable . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Swebilius*, supra, 325 Conn. 805. The state has no burden to prove that the defendant left the jurisdiction to avoid prosecution. Indeed, the state has no burden of proof until the defendant establishes his availability. Although the defendant's intent in leaving the state may be relevant and may factor into the analysis, the primary question is whether the defendant has proven that he was "not elusive, was available and was readily approachable" once the arrest warrant had been issued; (internal quotation marks omitted) id.; not whether the state has proven that he left the jurisdiction in order to evade arrest or prosecution. See, e.g., *Roger B.* v. *Commissioner of Correction*, 190 Conn. App. 817, 841, 212 A.3d 693 ("The issue in [this] case, however, is not whether the statute of limitations had been tolled while the [defendant] was absent from the state or even why he left the state. The issue is whether he was elusive, unavailable, or unapproachable once the warrant for his arrest had been issued."), cert. denied, 333 Conn. 929, 218 A.3d 70 (2019), and cert. denied, 333 Conn. 929, 218 A.3d 71 (2019).

Here, as we mentioned, the trial court found that the defendant did not satisfy his burden of establishing that

he was available for arrest. Therefore, the trial court correctly determined that the burden did not shift to the state to show the reasonableness of the delay in executing the defendant's arrest warrant. See, e.g., *Gonzalez* v. *Commissioner of Correction*, 122 Conn. App. 271, 285–86, 999 A.2d 781 (fact that defendant left state and relocated to Puerto Rico without leaving contact information with police and within days of learning of allegations of sexual abuse did not support finding of availability such that burden shifted to state to show reasonableness of delay in executing arrest warrant), cert. denied, 298 Conn. 913, 4 A.3d 831 (2010).

On the basis of the foregoing, we conclude that the trial court's finding that the defendant was not available is not clearly erroneous. Therefore, the defendant did not satisfy his burden of proving his affirmative defense, and we need not address the second step of the *Swebilius* test—namely, whether the state established that it executed the defendant's arrest warrant without unreasonable delay. See *State* v. *Swebilius*, supra, 325 Conn. 804. Accordingly, we conclude that the trial court properly denied the defendant's motion to dismiss.

The judgment is affirmed.

In this opinion the other justices concurred.

ORDERS

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ORDERS

JOHN ALAN SAKON *v.* JAMES N. SAKONCHICK ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 210 Conn. App. 903 (AC 43405), is denied.

ROBINSON, C. J., and ALEXANDER, J., did not participate in the consideration of or decision on this petition.

John Alan Sakon, self-represented, in support of the petition.

Stephen Sakonchick II, in opposition.

Decided June 28, 2022

PAOLA PISTELLO-JONES *v.* STEPHEN JONES

The defendant's petition for certification to appeal from the Appellate Court, 211 Conn. App. 903 (AC 44708), is denied.

David N. Rubin, in support of the petition.

Tara C. Dugo, in opposition.

Decided June 28, 2022

TOWN OF MIDDLEBURY *v.* FRATERNAL ORDER OF POLICE, MIDDLEBURY LODGE NO. 34 ET AL.

The plaintiff's petition for certification to appeal from the Appellate Court, 212 Conn. App. 455 (AC 44061), is granted, limited to the following issues:

"1. Did the Appellate Court correctly conclude that the defendant State Board of Labor Relations (labor board) did not act illegally, arbitrarily, or in abuse of

its discretion when it declined to adopt the contract coverage standard and instead applied the clear and unmistakable waiver standard in determining whether the named defendant union, Fraternal Order of Police, Middlebury Lodge No. 34, had contractually waived its right to collectively bargain with respect to its pension plan?

"2. Did the Appellate Court correctly conclude that the trial court had applied the correct standard in reviewing the labor board's application of the clear and unmistakable waiver standard?"

Thomas G. Parisot, in support of the petition.

Frank N. Cassetta, general counsel, and *David S. Taylor*, in opposition.

Decided June 28, 2022

STATE OF CONNECTICUT *v.* HERMAN K.

The defendant's petition for certification to appeal from the Appellate Court, 212 Conn. App. 592 (AC 44317), is denied.

Pamela S. Nagy, supervisory assistant public defender, in support of the petition.

Melissa E. Patterson, senior assistant state's attorney, in opposition.

Decided June 28, 2022

WILLIS W. *v.* OFFICE OF ADULT PROBATION

The petitioner Willis W.'s petition for certification to appeal from the Appellate Court, 212 Conn. App. 628 (AC 44796), is denied.

Christopher DeMatteo, in support of the petition.

Linda F. Rubertone, senior assistant state's attorney, in opposition.

Decided June 28, 2022

ARLENE BENNETTA *v.* CITY OF DERBY

The plaintiff's petition for certification to appeal from the Appellate Court, 212 Conn. App. 617 (AC 44871), is denied.

ALEXANDER, J., did not participate in the consideration of or decision on this petition.

Andrew J. Pianka, in support of the petition.

Scott R. Ouellette, in opposition.

Decided June 28, 2022

IN RE MADISON C. ET AL.

The petition of the respondent mother for certification to appeal from the Appellate Court, 213 Conn. App. 164 (AC 44926), is denied.

MULLINS and ALEXANDER, Js., did not participate in the consideration of or decision on this petition.

Albert J. Oneto IV, assigned counsel, in support of the petition.

Benjamin Abrams and *Evan O'Roark*, assistant attorneys general, in opposition.

Decided June 28, 2022

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CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

LINDA FIELDHOUSE *v.* REGENCY COACHWORKS, INC., ET AL.
(AC 44225)

Bright, C. J., and Alvord and DiPentima, Js.*

Syllabus

Pursuant to statute (§ 31-294c (a)), no proceedings for workers' compensation shall be maintained unless a written notice of claim for compensation is given, inter alia, within one year of the date of the accident that caused the personal injury.

The defendant employer appealed to this court from the decision of the Compensation Review Board reversing the decision of the Workers' Compensation Commissioner denying and dismissing, for lack of subject matter jurisdiction, the plaintiff employee's claim for workers' compensation benefits. During the course of her employment with the defendant, the plaintiff was injured, and, thereafter, the plaintiff's direct supervisor advised the plaintiff to submit a workers' compensation claim when her pain did not resolve. Subsequently, the plaintiff visited the defendant's workers' compensation insurance agency, P Co., in person, after it failed to return her calls requesting to file a claim. At P Co., the plaintiff stated that she wanted to file a claim and a P Co. employee, F, told her not to worry because she had two years to file a claim. F assisted the plaintiff with completing a first report of injury and told the plaintiff that she would file the claim for the plaintiff. The plaintiff thereafter received a phone call from the defendant's workers' compensation insurer, B Co., and the plaintiff provided a recorded statement about the incident and the treatment she had received. Shortly thereafter, the plaintiff received correspondence from B Co. indicating that the insurer had opened a claim and assigned a claim number for the plaintiff's date of injury. B Co. also enclosed in that correspondence a pharmacy card. The defendant subsequently filed a form 43 contesting both the jurisdiction and compensability of the plaintiff's claim. The plaintiff did not file a form 30C notice of claim or request a hearing within one year of the injuries she had sustained, as required by § 31-294c. The commissioner determined that, because the plaintiff failed to meet the statutory notice requirement for filing a claim for workers' compensation benefits set forth in § 31-294c (a) and failed to satisfy an exception to the notice requirement set forth in § 31-294c (c), the Workers' Compensation Commission lacked

* This appeal originally was argued before a panel of this court consisting of Chief Judge Bright, Judge Alvord, and former Justice Sullivan. Thereafter, Judge DiPentima replaced former Justice Sullivan. Judge DiPentima has read the briefs and appendices and listened to a recording of the oral argument prior to participating in this decision.

subject matter jurisdiction. On appeal, the board, inter alia, reversed the commissioner's decision, concluding that the commissioner misapplied the totality of the circumstances standard and that the plaintiff substantially complied with the statutory notice provisions such that the defendant was provided with constructive notice of the claim. On the defendant's appeal to this court, *held* that the board properly reversed the commissioner's decision, the board having properly determined that the totality of the circumstances indicated that the plaintiff substantially complied with the statutory notice provisions of § 31-294c (a): the defendant had sufficient notice that the plaintiff was pursuing or intended to pursue a workers' compensation claim and the prerequisites for establishing the commission's subject matter jurisdiction over a claim were met as the plaintiff had filed a first report of injury form, provided a recorded statement to B Co., and received correspondence from B Co. regarding her claim within one year of the date of injury, which indicated that it had opened a claim and assigned a claim number for the plaintiff.

Argued November 10, 2021–officially released July 12, 2022

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Second District denying and dismissing the plaintiff's claim for workers' compensation benefits for lack of subject matter jurisdiction, brought to the Compensation Review Board, which reversed the commissioner's decision, from which the named defendant appealed to this court. *Affirmed.*

David C. Davis, for the appellant (named defendant).

Lawrence C. Sgrignari, for the appellee (plaintiff).

Opinion

ALVORD, J. The defendant Regency Coachworks, Inc.,[1] appeals from the decision of the Compensation Review Board (board) reversing the decision of the Workers' Compensation Commissioner for the Second District (commissioner) determining that the plaintiff,

[1] BerkleyNet Underwriters, LLC, the workers' compensation insurer for Regency Coachworks, Inc., was also named as a defendant in this action but is not a party to this appeal. We therefore refer in this opinion to Regency Coachworks, Inc., as the defendant.

Linda Fieldhouse, failed to satisfy the notice requirement set forth in General Statutes § 31-294c and that her claim for workers' compensation benefits failed to satisfy an exception to the notice requirement as set forth in § 31-294c (c). On appeal, the defendant claims that the board erred, as a matter of law, in concluding that the commissioner misapplied the totality of the circumstances standard and that the plaintiff had substantially complied with the notice requirements such that the defendant was provided with constructive notice of the claim. We affirm the decision of the board.

The following facts, as found by the commissioner, and procedural history are relevant to our resolution of this appeal. On November 27, 2015, in the course of her employment for the defendant, the plaintiff fell down several stairs. The fall caused her to hit her head on the door at the bottom of the stairs, hit her knee on something, and bend her foot. She was unable to get up from the floor on her own, and her direct supervisor on that date, Robert Charland, had to help her. He assisted her up the stairs to her office where she sat down at her desk; however, after a few hours, she realized that the pain was not receding. After she informed Charland about her pain, he gave her permission to leave. The plaintiff left the office and drove herself to an urgent care clinic in Enfield.

At some point following the incident, the plaintiff told Charland that, because she was not getting any better, she was considering filing a workers' compensation claim, and he advised her to do so. Thereafter, she called the defendant's workers' compensation insurance agency, Paradiso Insurance Agency (agency), and told a representative that she needed to file a claim. On November 16, 2016, after previously leaving several messages in an attempt to make an appointment, the plaintiff visited the agency in person as its office is located just one street over from the defendant's office.

At the agency, the plaintiff specifically stated that she wanted to file a workers' compensation claim, but an agency employee, Stephanie Fanelli, told her not to worry because she had two years to file a claim. Fanelli also helped her to complete a first report of injury and told the plaintiff that she would file the claim for her.

Because the plaintiff was unaware of the specific time frame for filing a workers' compensation claim, she relied on Fanelli's statement that she had two years to file a claim and that Fanelli would file the claim. The plaintiff believed that the first report of injury that she had completed with Fanelli initiated her claim. After that report was completed, she received a number of communications from the defendant's workers' compensation insurer, BerkleyNet Underwriters, LLC (BerkleyNet), which she thought meant that her claim had been opened. First, on November 22, 2016, the plaintiff received a telephone call from a BerkleyNet representative, to whom she gave an approximately twenty-five minute long recorded statement. The plaintiff believed that her recorded statement provided BerkleyNet with information about the incident and the treatment she had received, allowing her to continue her claim. Shortly thereafter, the plaintiff also received correspondence from BerkleyNet, dated November 22, 2016, indicating that the insurer had opened a claim and assigned a claim number for a date of injury of November 27, 2015, and enclosed a pharmacy card. The plaintiff then received a letter, dated March 27, 2017, stating in relevant part: "In accordance with your [w]orkers' [c]ompensation claim from Friday, November 27, 2015, BerkleyNet . . . has arranged for you to be examined . . . ." The wording of this letter solidified the plaintiff's belief that she had a pending workers' compensation claim that had been commenced on November 16, 2016. Moreover, on May 4, 2017, the plaintiff received correspondence welcoming her to the

BerkleyNet pharmacy program, along with a second pharmacy card. As of the date of the formal hearing on November 20, 2018, however, the plaintiff had not received any workers' compensation benefits.

At trial, the defendant did not dispute that an incident occurred at the workplace on November 27, 2015. It argued, however, that the Workers' Compensation Commission (commission) was deprived of subject matter jurisdiction because (1) the plaintiff did not file a notice of claim (form 30C)[2] within one year from the date of injury and (2) none of the statutory exceptions to that requirement were satisfied. In opposition, the plaintiff asserted that, under the totality of the circumstances, the defendant was aware of her claim within one year of her date of injury.

The commissioner took administrative notice of a form 30C dated June 29, 2017, which was received by the commission on July 3, 2017, and a second copy of the same form 30C, which was received by the commission on July 26, 2017. The commissioner also took administrative notice of a denial of claim (form 43)[3] that was received by the commission on July 26, 2017, in which the defendant challenged both jurisdiction and compensability. Additionally, the commissioner took administrative notice of the fact that the first hearing request was received from the plaintiff on July 28, 2017, and that the first hearing was held on August 21, 2017. The commissioner then made the following findings: the plaintiff failed to file a form 30C within one year

[2] "A form 30C is the form prescribed by the workers' compensation commission of Connecticut for use in filing a notice of [a workers' compensation] claim . . . ." (Internal quotation marks omitted.) *Reid* v. *Speer*, 209 Conn. App. 540, 543 n.3, 267 A.3d 986 (2021), cert. denied, 342 Conn. 908, 271 A.3d 136 (2022).

[3] "A form 43 is a disclaimer that notifies a claimant who seeks workers' compensation benefits that the employer intends to contest liability to pay compensation." (Internal quotation marks omitted.) *Woodbury-Correa* v. *Reflexite Corp.*, 190 Conn. App. 623, 626 n.3, 212 A.3d 252 (2019).

of November 27, 2015, her date of injury; no hearing was requested and none was held within one year of November 27, 2015; no voluntary agreement was ever issued; and the defendant and BerkleyNet did not provide the plaintiff with any medical or surgical care.

Ultimately, the commissioner determined that, because the plaintiff failed to meet the statutory notice requirements for filing a claim for workers' compensation benefits set forth in § 31-294c, the commission lacked subject matter jurisdiction. Therefore, the commissioner denied and dismissed the plaintiff's claim. Subsequently, on appeal, the board concluded that the commissioner misapplied "the totality of circumstances standard" and that "[t]he actions taken by [BerkleyNet] on and after November 22, 2016, serve[d] to demonstrate that the claimant's interactions with her immediate supervisor, coupled with her personal appearance at the workers' compensation insurance agency with the express intention of filing a workers' compensation claim, reflect that the claimant substantially complied with the statutory notice provisions such that the [defendant was] provided with constructive notice of this claim."

On appeal to this court, the defendant asserts that the board erred, as a matter of law, in reversing the commissioner's decision because " 'totality of circumstances' or 'substantial compliance' are not statutory exceptions to the notice requirement as set forth in the plain language of the [Workers' Compensation Act (act), General Statutes § 31-275 et seq.]." More specifically, the defendant contends that the commission is a body created by statute, whose jurisdiction is outlined by the legislature, and it is legal error to carve out another exception to the notice of claim requirements of § 31-294c (a). Thus, the defendant argues that, without proper notice, the commission lacked subject matter jurisdiction. We disagree.

We first set forth our standard of review and the general principles applicable to workers' compensation appeals. "The conclusions drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . . Neither the . . . board nor this court has the power to retry [the] facts. It is well established that [a]lthough not dispositive, we accord great weight to the construction given to the workers' compensation statutes by the commissioner and [the] board. . . . The commissioner has the power and duty, as the trier of fact, to determine the facts. . . . Our scope of review of the actions of the board is similarly limited. . . . The role of this court is to determine whether the review [board's] decision results from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . .

"Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Because the filing of a notice of claim implicates the [commission's] subject matter jurisdiction . . . we review this determination applying a plenary standard of review." (Citation omitted; internal quotation marks omitted.) *Izikson* v. *Protein Science Corp.*, 156 Conn. App. 700, 707, 115 A.3d 55 (2015).

Section 31-294c (a) provides in relevant part: "No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident . . . ." Our Supreme Court has explained that "[f]iling a notice of claim or . . . satisfaction of one of the . . . exceptions [contained

in § 31-294c (c)] is a prerequisite that conditions whether the [commission] has subject matter jurisdiction under the [act]." (Internal quotation marks omitted.) *Veilleux* v. *Complete Interior Systems, Inc.*, 296 Conn. 463, 468, 994 A.2d 1279 (2010).

"Furthermore, [i]t is well established that, in resolving issues of statutory construction under the [act], we are mindful that the act indisputably is a remedial statute that should be construed generously to accomplish its purpose. . . . The humanitarian and remedial purposes of the act counsel against an overly narrow construction that unduly limits eligibility for workers' compensation. . . . Accordingly, [i]n construing workers' compensation law, we must resolve statutory ambiguities or lacunae in a manner that will further the remedial purpose of the act. . . . [T]he purposes of the act itself are best served by allowing the remedial legislation a reasonable sphere of operation considering those purposes." (Citation omitted; internal quotation marks omitted.) *DeJesus* v. *R.P.M. Enterprises, Inc.*, 204 Conn. App. 665, 677–78, 255 A.3d 885 (2021).

"Administrative agencies [such as the commission] are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of the statutes vesting them with power and they cannot confer jurisdiction upon themselves. . . . The plain language of the [act] . . . requires one of four possible prerequisites to establish the [commission's] subject matter jurisdiction over a claim: (1) a timely written notice of claim; General Statutes § 31-294c (a); (2) a timely hearing or a written request for a hearing or an assignment for a hearing; General Statutes § 31-294c (c); (3) the timely submission of a voluntary agreement; General Statutes § 31-294c (c); or (4) the furnishing of appropriate medical care by the employer to the employee for the respective work-related injury." (Citation omitted;

internal quotation marks omitted.) *Izikson* v. *Protein Science Corp.*, supra, 156 Conn. App. 708.

We begin our analysis with § 31-294c, which establishes the filing periods for notices of claim with respect to workers' compensation injuries. As stated previously, for the commission to have jurisdiction over a claim for workers' compensation benefits, § 31-294c (a) requires a claimant to file a "written notice of claim for compensation . . . within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be . . . ."

"Although a form 30C is the standard form used to provide notice of an employee's intent to pursue a workers' compensation claim, § 31-294c (a) does not require a plaintiff to draft his or her written notice of claim with absolute precision. . . . The legislature designed the [act] to further a remedial purpose. . . . The act's provisions, therefore, should be broadly construed to accomplish its humanitarian purpose. . . . The purpose of [§ 31-294c], in particular, is to alert the employer to the fact that a person has sustained an injury that may be compensable . . . and that such person is claiming or proposes to claim compensation under the [a]ct. . . . Furthermore, the statute's requirement that the plaintiffs use simple language when issuing a notice of claim indicates that the legislature intended to facilitate lay persons who pursue their claims without the advice of counsel. . . .

"In light of the foregoing principles, our case law has recognized that an employee satisfies the notice of claim requirement of § 31-294c (a) if, under the totality of the circumstances, he or she provides written notice that is in substantial compliance with the notice content requirements of [§ 31-294c (a)]." (Citations omitted; internal

quotation marks omitted.) *Izikson* v. *Protein Science Corp.*, supra, 156 Conn. App. 708–709.

For example, in *Funaioli* v. *New London*, 52 Conn. App. 194, 195, 726 A.2d 626 (1999), the plaintiff attended a routine physical examination in March, 1987, during which he was diagnosed with hypertension. One year later, the plaintiff hired a law firm to represent him; id.; and the plaintiff's attorney "sent a letter to the second district workers' compensation commissioner and to the chairman of the workers' compensation commission that stated: 'Enclosed you will find a [first report of occupational injury or disease] with reference to the above-named Claimant. We are not requesting a hearing at this time.' " Id., 196. Notably, "[t]he plaintiff did not file a form 30C notice of claim until 1992 through a new attorney . . . ." Id. This court, however, held that the letter from the plaintiff's attorney stating that the claimant was not requesting a hearing "at this time" along with the first report of injury, were sufficient to satisfy the notice requirement of § 31-294c. Id., 196, 198.

Conversely, in *Izikson*, after the plaintiff was injured in the course of his employment with the defendant, he notified his supervisor, who filled out a first report of injury form and transmitted it to the employer's insurance provider. *Izikson* v. *Protein Science Corp.*, supra, 156 Conn. App. 702. The supervisor then informed the plaintiff that the insurance provider wanted to speak with him and that the plaintiff should contact the insurance provider directly to learn more about the process of pursuing a workers' compensation claim. Id., 702–703. The plaintiff received a prescription card in the mail from the insurance provider, but the accompanying letter did not indicate that it had accepted any claim. Id., 703. A form 30C was never filed, and the plaintiff never requested a hearing within one year of his injury. Id. Subsequently, more than one year after the injury

occurred, the plaintiff filed a claim for workers' compensation benefits. Id., 704. His claim was dismissed as untimely by the commissioner and that dismissal subsequently was affirmed by the board. Id., 705. This court held that the board properly affirmed the commissioner's determination because the plaintiff failed to comply with the notice of claim requirement of § 31-294c (a), as he "failed to provide any sort of written notice informing the defendants that he was pursuing or intended to pursue a workers' compensation claim." Id., 712. Most notably, this court found the following facts, among others, to be determinative: the supervisor, not the plaintiff, filed the first report of injury form; the plaintiff never sent any e-mail or other correspondence mentioning an intent to file a claim; and the plaintiff never contacted the insurance provider, even after his supervisor suggested that he do so. Id.

In the present case, unlike in *Izikson*, when Charland told the plaintiff to go ahead and file a claim with the agency, the plaintiff, after many unsuccessful attempts to contact the agency, visited the agency in person and, at that time, was able to file her first report of injury form. Similar to the plaintiff in *Izikson*, however, the plaintiff in the present case believed that a claim had been opened when she received a letter and pharmacy card from BerkleyNet, dated November 22, 2016.[4] But, unlike in *Izikson*, in the present case, the plaintiff received the letter and pharmacy card from BerkleyNet

[4] The letter dated November 22, 2016, states that it was sent in regard to the status of her claim for her injury suffered on November 27, 2015. The letter provides in relevant part: "BerkleyNet is the workers compensation carrier for your [e]mployer . . . . We have received a First Report of Injury and have opened a claim for the date of injury above. . . . If you need medical treatment, please ask your employer for the name of an approved provider on your company's panel of network doctors. If you need to fill a prescription related to your injury at work, please use the enclosed Instant Access Pharmacy Card at a participating network pharmacy to avoid paying out-of-pocket for your medication."

as a direct result of her efforts to initiate and pursue her workers' compensation claim. Specifically, the plaintiff initiated the claims process by filing a first injury report with Fanelli. Subsequently, on November 22, 2016, she gave a recorded statement to a representative from BerkleyNet that lasted roughly twenty-five minutes. Notably, the plaintiff filed her first injury report, provided her recorded statement, and received the letter with the pharmacy card in response to her statement all within one year of the date of injury. Finally, a few months after she had provided the recorded statement, the plaintiff received a letter stating that "[i]n accordance with your [w]orkers' [c]ompensation claim from Friday, November 27, 2015, [BerkleyNet] has arranged for you to be examined . . . ."

Accordingly, given that the plaintiff had filed a first report of injury form, provided a recorded statement to BerkleyNet, and received multiple pieces of correspondence in the mail regarding her "[w]orkers' [c]ompensation claim from Friday, November 27, 2015," and indicating that BerkleyNet had opened a claim and assigned a claim number for the plaintiff, we conclude that the board properly determined that, based on the totality of the circumstances, the plaintiff substantially complied with the statutory notice provisions of § 31-294c (a).

To be clear, in reaching this conclusion, we are not carving out a new exception to the notice requirements of § 31-294c (a). We reiterate that "[i]t is not the court's role to acknowledge an exclusion when the legislature painstakingly has created such a complete statute. We consistently have acknowledged that the act is an intricate and comprehensive statutory scheme. . . . The complex nature of the workers' compensation system requires that policy determinations should be left to the legislature, not the judiciary." (Internal quotation marks omitted.) *Salerno* v. *Lowe's Home Improvement*

Center, 198 Conn. App. 879, 884, 235 A.3d 537 (2020); see also *Wiblyi* v. *McDonald's Corp.*, 168 Conn. App. 92, 107, 144 A.3d 530 (2016) ("we will not recognize, in the absence of legislative action," time limitation not set forth in statute); *Izikson* v. *Protein Science Corp.*, supra, 156 Conn. App. 713 (expressly declining "to carve out another exception" to notice of claim requirement in § 31-294c (a) because "the legislature, rather than this court, is the proper forum through which to create" additional exceptions to that statute). We simply conclude that the plaintiff, in filing her first report of injury with BerkleyNet and supplementing it with a recorded statement, substantially complied with the written notice requirement § 31-294c (a).

The decision of the Compensation Review Board is affirmed.

In this opinion the other judges concurred.

GMAT LEGAL TITLE TRUST 2014-1, U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE *v.* VITO CATALE ET AL.
(AC 44132)

Bright, C. J., and Alvord and Prescott, Js.

Syllabus

The plaintiff sought to foreclose a mortgage on certain real property owned by the defendants M and V. The plaintiff filed a motion for summary judgment along with three affidavits averring, respectively, to the outstanding debt, the fair market value of the property, and additional facts relevant to the motion for summary judgment. The plaintiff then filed an application for a prejudgment remedy to attach potential proceeds that V could obtain as a result of the adjudication or settlement of an unrelated pending civil action in which he was the plaintiff. The parties reached an agreement, which was approved by the trial court, pursuant to which the plaintiff agreed to defer a hearing on its prejudgment remedy application until the unrelated action was resolved and the defendants agreed to notify the plaintiff of any judgment or settlement of the unrelated action and further agreed not to dispose of any assets

identified in the plaintiff's application. That following year, asserting that the defendants violated their agreement by failing to inform the plaintiff of the settlement of the unrelated action, the plaintiff filed what it deemed to be an ex parte application for a prejudgment remedy, which referenced the affidavits filed in connection with its motion for summary judgment and also attached an affidavit from an officer of its loan servicing company, averring facts in support of its allegation that exigency necessitated the granting of a prejudgment remedy. Without conducting a hearing, but after reviewing the objections filed by the defendants, the trial court granted the ex parte application, and the defendants appealed to this court. *Held*:

1. The trial court properly exercised jurisdiction over the application for a prejudgment remedy because the application was not defective with respect to the affidavits provided: the affidavit attached to the plaintiff's application and those that it incorporated by reference contained facts intending to establish probable cause that the plaintiff would prevail in obtaining a foreclosure judgment against the defendants, including a right to recover an amount greater than or equal to the amount of the prejudgment remedy that it sought; moreover, the applicable statute (§ 52-578e) does not require that affidavits in support of a prejudgment remedy be directly attached to the application itself nor does it bar a party from incorporating by reference affidavits that were already a part of the record and were available to the trial court and all parties.
2. The defendants' claim that, even if the trial court had jurisdiction, it improperly acted on the application without providing the defendants with a prompt postattachment hearing as due process required was moot: subsequent to the filing of this appeal, the trial court granted summary judgment as to the defendants' liability on the mortgage note and rendered a judgment of strict foreclosure in favor of the plaintiff, establishing that there was probable cause for a prejudgment remedy, that insufficient equity in the property existed to cover the total debt owed by the defendants to the plaintiff, and that the deficiency exceeded the prejudgment remedy in place; accordingly, any remand for a hearing regarding probable cause and any opportunity to be heard regarding the amount of the prejudgment remedy would be meaningless and could provide no practical relief to the defendants.

Argued November 17, 2021—officially released July 12, 2022

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Bellis*, *J.*, approved the parties' stipulated agreement regarding adjudication

of the plaintiff's application for a prejudgment remedy; thereafter, the court, *Spader*, *J.*, granted the plaintiff's ex parte amended application for a prejudgment remedy, from which the named defendant et al. appealed to this court; subsequently, RMS Series Trust 2020-1 was substituted as the plaintiff; thereafter, the court, *Radcliffe*, *J.*, rendered judgment of strict foreclosure. *Affirmed in part*; *appeal dismissed in part.*

Douglas R. Steinmetz, with whom, on the brief, was *Maximino Medina*, *Jr.*, for the appellants (named defendant et al.).

Paul N. Gilmore, for the appellee (substitute plaintiff).

Opinion

PRESCOTT, J. In this residential mortgage foreclosure action, the defendants Vito Catale and Maria Catale[1] appeal from the trial court's granting of an amended "ex parte" application for a prejudgment remedy (ex parte application)[2] filed by the original plaintiff, GMAT Legal Title Trust 2014-1, U.S. Bank, National Association as Legal Title Trustee.[3] The defendants claim that the court improperly granted the plaintiff's ex parte application because (1) certain statutorily

[1] The foreclosure complaint named the following parties as additional defendants by virtue of an interest held in the mortgaged property subsequent in right to that of the plaintiff: Mortgage Electronic Registration Systems, Inc., as nominee for WMC Mortgage Corp.; WMC Mortgage Corp.; Cavalry SPV I, LLC; Advanced Radiology Consultants, LLC; the Department of Revenue Services; and Connecticut Distributors, Inc. None of these additional defendants is participating in the present appeal and, thus, all references to the defendants in this opinion are to the Catales only.

[2] As we discuss more fully in footnote 8 of this opinion, the "ex parte" designation used by the plaintiff on the application is somewhat of a misnomer given that the defendants filed a response to the application that the court considered prior to acting on the ex parte application.

[3] During the pendency of this appeal, the note, the mortgage and all rights to the prejudgment remedies were transferred to RMS Series Trust 2020-1, which was subsequently substituted as the plaintiff and appellee.

required affidavits either were missing or insufficient and, therefore, the court lacked jurisdiction over the ex parte application, and (2) even if the court had jurisdiction over the ex parte application, the court deprived the defendants of due process by granting it without providing the defendants with a postattachment hearing at which they would have had an opportunity to challenge both whether probable cause existed to order a prejudgment remedy and in what amount.

As to the first claim, we conclude that the court properly exercised jurisdiction over the application for prejudgment remedy. As to the second claim, we conclude that, even if we agreed with the defendants that they were entitled to an opportunity to be heard at a postattachment hearing despite the challenges posed during the early stages of the COVID-19 pandemic,[4] no practical relief can be afforded to them by ordering a hearing at this time because, during the pendency of this appeal, the court rendered a final judgment in the underlying foreclosure action in favor of the plaintiff that conclusively established both probable cause for the granting of a prejudgment remedy and that the plaintiff likely would be entitled to a deficiency judgment that would far exceed the amount of the prejudgment remedy ordered. In other words, under the unique circumstances present here, the defendants have failed to

[4] It is unnecessary to provide a detailed list or a timeline of the actions taken by the Judicial Branch and the Executive Branch to minimize the spread of COVID-19 and their effect on court proceedings. It will suffice to note that, at the time of the filing of the application for prejudgment remedy that is the subject of the present appeal, the Superior Court was scheduling and hearing only matters that the Judicial Branch deemed "Priority 1 Business Functions." Statement from Judge Patrick L. Carroll III, Chief Court Administrator (March 12, 2020), available at https://www.jud.ct.gov/HomePDFs/StatementChiefCourtAdministratorCarroll0320.pdf (last visited June 28, 2022). Among those matters listed on the Judicial Branch website as constituting "Priority 1 Business Functions" were "[e]x parte motions . . . ." Id. It is unnecessary in resolving this appeal to determine whether "ex parte motions" included ex parte applications for prejudgment remedies.

demonstrate how they would benefit from a postattachment hearing and, therefore, the remainder of their arguments on appeal have been rendered moot. Accordingly, we affirm the judgment of the court.[5]

The record reveals the following undisputed facts and procedural history. In August, 2017, the plaintiff commenced the underlying action to foreclose a mortgage on residential property in Monroe owned by the defendants.[6] In July, 2018, following the termination of foreclosure mediation proceedings, the defendants filed their answer and special defenses. The plaintiff thereafter filed a motion to strike the special defenses and, later, a motion for summary judgment as to liability on the note. In support of the motion for summary judgment, the plaintiff filed an affidavit of debt dated September 6, 2018, in which a loan servicing officer with knowledge of the account averred in relevant part that, as of that date, the outstanding balance due on the underlying note was $974,809.77. The plaintiff also filed an affidavit from a real estate appraiser averring that the fair market value of the property as of October 16, 2018, was $516,000. Finally, the plaintiff filed a third affidavit that averred to additional facts relevant to the summary judgment motion.

On February 14, 2019, shortly after the initial argument on its pending motions,[7] the plaintiff filed an application for a prejudgment remedy along with a motion

[5] On the day that the appeal was assigned for oral argument, the plaintiff filed a motion to dismiss the appeal as moot because, at that time, the court had rendered summary judgment as to liability in favor of the plaintiff, which, according to the plaintiff, established probable cause and would allow the plaintiff to obtain a new prejudgment remedy. The defendants later filed an opposition to that motion. In light of our disposition of the appeal, no further action is necessary on that motion.

[6] A prior action to foreclose the mortgage was initiated in 2011, but that action was dismissed on dormancy grounds in January, 2017. See *Consumer Solutions, LLC* v. *Catale*, Superior Court, judicial district of Fairfield, Docket No. CV-11-6018401-S (January 23, 2017).

[7] The record shows that, although the motions initially were argued before the court, *Bruno, J.*, on January 30, 2019, they were not acted on and later

for disclosure of property and assets. The stated purpose of the application was to attach potential proceeds that Vito Catale might obtain as a result of the adjudication or settlement of an unrelated pending civil action in which he was the plaintiff (*Catale* action). See *Catale* v. *DiGennaro*, Superior Court, judicial district of Fairfield, Docket No. CV-17-6062268-S. The plaintiff's application for a prejudgment remedy incorporated by reference the affidavits that it previously had filed with the court in support of its motion for summary judgment and alleged that these affidavits established that probable cause existed that the plaintiff would be entitled to a deficiency judgment in the foreclosure matter in an amount equal to or greater than $458,000. The defendants filed a request for a hearing to contest the application, checking a box on the form response that they claimed "a defense, counterclaim, set-off, or exemption."

The parties subsequently reached a stipulated agreement regarding adjudication of the application for prejudgment remedy. The court approved the agreement

were assigned for reargument before Judge Spader over an objection by the defendants on the ground that the plaintiff had not timely sought reassignment pursuant to Practice Book § 11-19 (b). Following reargument, the court granted the motion to strike with respect to all special defenses except for one that alleged a lack of subject matter jurisdiction, which the court indicated it would consider in ruling on the motion for summary judgment. As to the motion for summary judgment, the court decided that, although it "believe[d] that the plaintiff has successfully set forth its prima facie case," it could not "fully adjudicate the motion [for summary judgment] at this time [because] the defendants have fifteen days in which to file a new pleading after this granting of the motion to strike pursuant to Practice Book § 10-44." It instructed that, "[i]f the defendants replead, the plaintiff should reclaim its motion for summary judgment supplemented with additional responses to the new pleading." The defendants timely filed an amended answer and special defenses. The plaintiff again moved to strike the special defenses, which, during the pendency of the present appeal, the court again granted with the exception of the one challenging the court's subject matter jurisdiction. On April 16, 2021, the court granted summary judgment as to liability only in favor of the plaintiff, indicating that it "will review the balance due and the form of the judgment at the time the plaintiff

and made it an order of the court on March 13, 2019. The agreement provided in relevant part that the plaintiff agreed to defer a hearing on its application for prejudgment remedy and the defendants' objection thereto until after a resolution of the *Catale* action. In exchange, the defendants agreed not to dispose of any assets identified in the prejudgment remedy application, including any future settlement proceeds, and to promptly notify the plaintiff when a judgment or settlement was reached in the *Catale* action. The parties further agreed to cooperate with each other and to make best efforts to coordinate with the trial court to schedule a hearing on the application for prejudgment remedy as soon as possible after a resolution of the *Catale* action.

On June 1, 2020, the plaintiff filed the ex parte application that is the focus of the present appeal.[8] The ex parte application again incorporated by reference the affidavits that the plaintiff had filed in support of its motion for summary judgment and that were referenced in its earlier application for a prejudgment remedy. The plaintiff also attached several exhibits, including an affidavit from an officer of its loan servicing company that averred facts in support of the plaintiff's new allegations that exigency necessitated the granting of an ex parte prejudgment remedy.

moves for strict foreclosure." The plaintiff filed a motion for a judgment of strict foreclosure on September 1, 2021.

[8] The plaintiff chose to title the ex parte application "Amended Application (Motion)—Now Ex Parte—For Prejudgment Remedy." We are not convinced that this title accurately reflects the true nature of the amended application in this case. "Ex parte" is commonly understood to mean "[d]one or made at the instance and for the benefit of one party only, *and without notice to, or argument by, anyone having an adverse interest* . . . ." Black's Law Dictionary (11th Ed. 2019) p. 722. As the procedural history that follows makes clear, the defendants not only received notice and a copy of the ex parte application, but they also filed a written response that was considered by the court prior to it acting on the merits of the ex parte application. Nevertheless, whether the application properly may be construed as "ex parte" has no bearing on our analysis or on the resolution of the present appeal.

According to the plaintiff's ex parte application, the defendants intentionally violated the March 13, 2019 stipulated order by failing to notify it of a settlement that purportedly had been reached in the *Catale* action. One of the exhibits attached to the ex parte application was a transcript from a court-ordered mediation session in the *Catale* action in which the parties discuss the terms of an alleged settlement agreement with the court.[9] The plaintiff asserted in its ex parte application that there was a reasonable likelihood that the defendants (1) were about to remove property from the state, (2) were about to fraudulently dispose of some of this property, and (3) had fraudulently hidden or withheld money, property or effects. The plaintiff noted in its memorandum of law in support of the ex parte application that "[t]he reason for the ex parte process in this matter is to dispense with the preattachment hearing requirement, as there are grounds for ex parte process. The stipulated order enjoins the defendant[s] from transferring, pledging, hypothecating or otherwise disposing of the target asset until after a hearing can be held, the [prejudgment remedy] application is decided and the plaintiff thereafter has ten days to effectuate

[9] The parties did not agree on whether a settlement was in fact reached at that time such that the defendants' obligation to work with the plaintiff to obtain a hearing on the as yet unadjudicated initial application for a prejudgment remedy was triggered. The defendants maintained that only a framework of a potential settlement agreement had been reached at the time the plaintiff filed the ex parte application and that such framework "expressly encompassed numerous material substantive conditions precedent . . . which never happened." In its initial decision granting the ex parte application, the court made note that the record contained conflicting evidence regarding whether a settlement was reached, and the court made no definitive finding one way or the other. In its contemporaneous ruling on the defendants' objection to the ex parte application, however, the court appears to have found that there was in fact a settlement agreement. Because our resolution of this appeal does not turn on whether a valid settlement, in fact, ever existed prior to the court granting the ex parte application, we need not resolve the ambiguous record regarding this issue. We note only that the *Catale* action undisputedly has since been resolved.

the prejudgment remedy order. Therefore, the application is being e-filed in such a way that the defendant[s] actually will receive notice of the application. There still is need for prompt judicial action, though, as the defendant[s] already [are] in violation of the stipulated order."

With its ex parte application, the plaintiff also filed a caseflow request form that indicated that it had informed the defendants of the ex parte application and that they had not consented to it. Later that same day, the court issued an order granting the caseflow request and stating: "The court will consider the amended application ex parte."

The following day, June 2, 2020, the defendants filed a motion asking the court to vacate its order granting the plaintiff's caseflow request to consider the application "ex parte . . . ." They argued that "[t]he application raise[d] factual issues [that could not] be resolved on the papers" and that "[e]x parte consideration under the circumstances [was] unwarranted and inconsistent with the defendants' due process rights." The court later denied that motion, stating: "The court gave consideration to due process concerns and limited its [prejudgment remedy] to real property and, essentially, a lien on settlements in other cases which were basically agreed to by counsel that the funds should be held in escrow previously in this case. The court will consider expanding or reducing upon the [prejudgment remedy] after a disclosure of assets is completed and further proceedings occur."

Also on June 2, 2020, *and prior to any action by the court on the ex parte application*, the defendants filed a response to the application itself. Specifically, the defendants objected to the application "being given ex parte consideration," disputed that any final agreement had been reached in the *Catale* action, and requested

an evidentiary hearing "when the court may do so safely, given the COVID-19 procedures and limitations now in place." The defendants did not claim that the court lacked jurisdiction over the application due to the plaintiff's failure to attach copies of all supporting affidavits directly to the ex parte application rather than incorporating some by reference. The defendants, later that same day, filed a "supplemental objection" to which they attached an affidavit by Vito Catale's attorney in the *Catale* action.

On June 2, 2020, the court, *Spader*, *J.*, issued an order granting the ex parte application without conducting a hearing but on due consideration of the defendants' papers offered in objection. Specifically, the court's order stated in relevant part: "From an examination of the amended application (motion), and the original application, and filings in this matter, affidavits in support of the amended application *and giving due consideration to the defendants' amended answer and special defenses as set forth and the objection they filed, with its exhibit A*, it is found that there is probable cause to sustain the validity of the plaintiff's claim, and that the application should be granted ex parte because of the inconsistencies alleged to have been set forth before Judge Arnold indicating that the matters bearing docket number FBT-CV-15-6052908-S and FBT-CV-17-6022260-S had been settled and the e-mails from the defendants' counsel in this matter alleging that they have not been. The previous agreements of the parties, approved by Judge Bellis at docket [entry] #174, clearly involved these other matters and any proceeds thereunder being held in escrow and granting this motion further ensures that all counsel understand that agreement. The court finds, based upon the contents of the amended application and the e-mails attached thereto, that there is a reasonable likelihood that the defendants are about to remove property from this state and/or dispose of it

and/or fraudulently hide or withhold property or money (such as the settlement proceeds, when and if received) to prevent the satisfaction of the plaintiff's debts should they prevail herein.

"Therefore, it is hereby ordered that the plaintiff may attach to the value of $458,000: [1] any and all real property of the defendants and [2] potential receipt of funds/settlements from lawsuits.

"The request for the disclosure of assets is also approved. [Although] it is unclear when the examination incident to the same could occur in court, if counsel cannot agree to a date to do so within their own offices, the court should be advised and will schedule this for a date as soon as practicable, although as an officer of the court, the defendants' attorney is expected to try to accomplish this examination prior to the resumption of court operations, if practicable. When such operations resume, the court will consider future filings of the defendants relating to this motion.

"[Although] the court is not allowing the seizure of bank accounts in relation to this motion because of the inability of the court to have an immediate hearing and due process concerns, it will be evident in the disclosure of assets if funds are being transferred solely to avoid the plaintiff's debts and a future plaintiff's motion will be considered following such disclosure." (Emphasis added; footnote omitted.) The defendants timely filed the present appeal on June 9, 2020.[10]

During the pendency of the appeal, further proceedings have occurred that have a bearing on our consider-

[10] Although orders pertaining to prejudgment remedies are ordinarily, by their nature, interlocutory rulings, General Statutes § 52-278*l* (a) deems certain prejudgment remedy rulings to be final judgments for purposes of appellate jurisdiction. Any such appeal, however, must be taken "within seven days of the rendering of the order from which the appeal is to be taken." General Statutes § 52-278*l* (b).

ation of the issues raised on appeal.[11] First, although at the time of oral argument of the present appeal it remained hotly contested as to whether any settlement had been reached in the *Catale* action at the time the court acted on the ex parte application, the parties now agree that settlement documents were signed by the parties in the *Catale* action on October 7, 2021, and that matter has been withdrawn. Furthermore, in the underlying foreclosure action, the court first rendered summary judgment as to liability in favor of the plaintiff and subsequently rendered a judgment of strict foreclosure in favor of the plaintiff, finding that the fair market value of the property, as stipulated by the parties, was $685,000; and that the updated amount of debt owed by the defendants was $1,119,846.02, not including attorney's fees and costs. The defendants have filed a separate appeal from the judgment of foreclosure.[12]

I

The defendants first claim that the court lacked jurisdiction to grant the plaintiff's ex parte application due

[11] On February 8, 2022, we ordered the parties, sua sponte, to file simultaneous supplemental briefs apprising us of "any and all relevant proceedings, filings, or other developments" in the underlying action and the *Catale* action that had "occurred since oral argument of the present appeal and the filing of the [plaintiff's] motion to dismiss [the appeal as moot]" and addressing, inter alia, "the legal or factual significance, if any, of the same on this court's consideration of whether the present appeal, or any of the claims raised therein, should be dismissed as moot . . . ."

[12] The fact that the defendants have taken an appeal from the final judgment of foreclosure does not affect our conclusion in this opinion that the judgment of foreclosure, whether affirmed or reversed, vitiates any argument that there was a lack of probable cause that the plaintiff would obtain a judgment in its favor, as would have been necessary to grant a prejudgment remedy. Proceedings to enforce or carry out a judgment may be stayed while an appeal is pending. See Practice Book § 61-11. Until a judgment is overturned on appeal, however, it is still presumed valid and a conclusive adjudication of the parties' rights. See *State* v. *Andino*, 173 Conn. App. 851, 874–75 n.12, 162 A.3d 736 (rejecting claim that Appellate Court judgment is not binding precedent while appeal from judgment is pending before our Supreme Court), cert. denied, 327 Conn. 906, 170 A.3d 3 (2017).

to the plaintiff's failure to attach directly to the ex parte application affidavits that were required by statute and were necessary to establish probable cause that the plaintiff would obtain a judgment in its favor. The plaintiff argues that (1) its application was not defective with respect to the affidavits provided and (2) even if we agreed with the defendants' claim, such a defect did not implicate or deprive the court of jurisdiction or authority to award a prejudgment remedy under the circumstances. We agree with the plaintiff on both accounts.[13]

We begin with our standard of review and other relevant legal principles. "A determination regarding a trial court's subject matter jurisdiction is a question of law over which we [generally] exercise plenary review. . . . Subject matter jurisdiction involves the [court's power] to adjudicate the type of controversy presented by the

[13] "[T]he court's authority to act pursuant to a statute is different from its subject matter jurisdiction." *Amodio* v. *Amodio*, 247 Conn. 724, 728, 724 A.2d 1084 (1999). Although it is not entirely clear from their briefing whether the defendants claim that the court lacked subject matter jurisdiction or only statutory authority to act with respect to the prejudgment remedy, in either case, if true, the prejudgment remedy arguably would be void ab initio and the defendants arguably would be entitled to a remand directing the court to vacate the prejudgment remedy. By contrast, as discussed in part II of this opinion, the remainder of the defendants' arguments on appeal do not directly implicate either the court's jurisdiction or authority to act but, rather, challenge the court's decision not to afford the defendants a prompt postattachment hearing at which they presumably would have had an opportunity to present evidence necessary to rebut whether probable cause existed for the ex parte prejudgment remedy as well as the amount of such remedy. If we agreed with the defendants regarding these remaining arguments, the appropriate remedy would not be an order vacating the existing prejudgment remedy outright, but a remand for a hearing in accordance with due process to determine whether the prejudgment remedy in place should be maintained. We are unconvinced that any practical relief can flow from such a remand and believe a new hearing regarding the existing prejudgment remedy would, at this juncture, also be a waste of judicial resources. Nothing in our resolution of the present appeal should be viewed as preventing either party from moving the trial court for an appropriate modification or dissolution of the existing prejudgment remedy.

action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal. . . . In determining whether a court has subject matter jurisdiction, however, we indulge every presumption in favor of jurisdiction." (Citations omitted; internal quotation marks omitted.) *Reinke* v. *Sing*, 328 Conn. 376, 382, 179 A.3d 769 (2018). The proper scope of a court's statutory authority also presents a question of law over which our review is plenary. See *Tarro* v. *Mastriani Realty, LLC*, 142 Conn. App. 419, 431, 69 A.3d 956, cert. denied, 309 Conn. 912, 69 A.3d 308 (2013), and cert. denied, 309 Conn. 912, 60 A.3d 309 (2013). "The power of the court to hear and determine, which is implicit in jurisdiction, is not to be confused with the way in which that power must be exercised in order to comply with the terms of the statute." (Internal quotation marks omitted.) *Amodio* v. *Amodio*, 247 Conn. 724, 728, 724 A.2d 1084 (1999).

"The remedy of attaching and securing a defendant's property to satisfy a potential judgment in favor of the plaintiff is unknown to the common law and is purely a statutory vehicle." *Glanz* v. *Testa*, 200 Conn. 406, 408, 511 A.2d 341 (1986). "The law governing prejudgment remedies is codified in General Statutes §§ 52-278a through 52-278n." *Goodwin* v. *Pratt*, 10 Conn. App. 618, 620, 524 A.2d 1168 (1987). General Statutes § 52-278e contains the procedures by which a plaintiff may obtain a prejudgment remedy ex parte without a preattachment hearing.[14]

[14] General Statutes § 52-278e provides in relevant part: "(a) The court or a judge of the court may allow the prejudgment remedy to be issued by an attorney without hearing as provided in sections 52-278c and 52-278d upon the filing of an affidavit sworn to by the plaintiff or any competent affiant setting forth a statement of facts sufficient to show that there is probable cause that a judgment in the amount of the prejudgment remedy sought,

Section 52-278e (a) provides that the court may order a prejudgment remedy without the usual hearing provided for in General Statutes §§ 52-278c and 52-278d on the filing of an affidavit averring facts sufficient to show

or in an amount greater than the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff and that there is reasonable likelihood that the defendant (1) has hidden or will hide himself so that process cannot be served on him or (2) is about to remove himself or his property from this state or (3) is about to fraudulently dispose of or has fraudulently disposed of any of his property with intent to hinder, delay or defraud his creditors or (4) has fraudulently hidden or withheld money, property or effects which should be liable to the satisfaction of his debts.

"(b) If a prejudgment remedy is issued pursuant to this section, the plaintiff shall include in the process served on the defendant a notice and claim form, in such form as may be prescribed by the Office of the Chief Court Administrator . . . .

"(c) The notice and claim form required by subsection (b) of this section shall contain (1) the name and address of any third person holding property of the defendant who is subject to garnishee process preventing the dissipation of such property, and (2) a statement of the procedure set out in subsection (d) of this section for requesting a hearing to move to dissolve or modify the prejudgment remedy.

"(d) A defendant may move to dissolve or modify a prejudgment remedy allowed pursuant to this section by any proper motion or by return to the Superior Court of a signed claim form that indicates, by the checking of a box on the claim form, whether the claim is an assertion of a defense, counterclaim, set-off or exemption, an assertion that any judgment that may be rendered is adequately secured by insurance, an assertion that the amount of the prejudgment remedy is unreasonably high, a request that the plaintiff be required to post a bond to secure the defendant against any damages that may result from the prejudgment remedy, or a request that the defendant be allowed to substitute a bond for the prejudgment remedy.

"(e) The court shall proceed to hold a hearing and determine any motion made under subsection (d) of this section not later than seven business days after its filing. If the court determines at such hearing requested by the defendant that there is probable cause that judgment will be rendered in the matter in favor of the plaintiff and, if the plaintiff has relied on a ground set forth in subsection (a) of this section, that there is probable cause to believe such ground exists, the prejudgment remedy granted shall remain in effect. If the court determines there is no probable cause to believe that a judgment will be rendered in the matter in favor of the plaintiff or, if a ground set forth in subsection (a) of this section was relied on, to believe such ground exists, the prejudgment remedy shall be dissolved. An order shall be issued by the court setting forth the action it has taken. . . ."

that (1) probable cause exists that a judgment in an amount greater than or equal to the prejudgment remedy sought will be rendered in favor of the plaintiff and (2) exigent circumstances warrant immediate action because the defendant is about to remove from the state or fraudulently hide or transfer money or other property that could be used to satisfy that judgment.

In order to comport with federal constitutional due process requirements; see *Connecticut* v. *Doehr*, 501 U.S. 1, 17–18, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991); the statute requires some predicate showing by the plaintiff that there is a need for exigency and further guarantees a defendant, on request, an opportunity for a prompt postattachment hearing at which the defendant will have an opportunity to challenge the bases for the prejudgment remedy.[15]

In other words, "[§] 52-278e (a) sets forth two requirements that must be satisfied before a court can allow the issuance of an ex parte prejudgment remedy. . . . [Furthermore, a] defendant against whom an ex parte prejudgment remedy has been issued may move to dissolve or modify the attachment by following the procedures set forth in § 52-278e (d). . . . Upon such a motion, the trial court shall proceed to hold a hearing . . . . If the court determines at such hearing requested by the defendant that there is probable cause that judgment will be rendered in the matter in favor of the plaintiff and . . . that there is probable cause to believe [the exigency ground asserted in the plaintiff's application] exists, the prejudgment remedy granted

[15] The predecessor to the current version of § 52-278e permitted the court to allow an ex parte prejudgment remedy without requiring any initial showing of exigent circumstances warranting such relief. See *Connecticut* v. *Doehr*, supra, 501 U.S. 18 (holding "Connecticut provision before us, by failing to provide a preattachment hearing *without at least requiring a showing of some exigent circumstance*, clearly falls short of the demands of due process" (emphasis added)).

shall remain in effect. If the court determines there is no probable cause to believe that a judgment will be rendered in the matter in favor of the plaintiff or [no exigency] ground exists, the prejudgment remedy shall be dissolved." (Citations omitted; internal quotation marks omitted.) *State* v. *Sunrise Herbal Remedies, Inc.*, 296 Conn. 556, 569, 2 A.3d 843 (2010).

It is well established that "prejudgment remedies are in derogation of the common law and, therefore, [our] prejudgment remedy statutes must be strictly construed . . . ." *Feldmann* v. *Sebastian*, 261 Conn. 721, 726, 805 A.2d 713 (2002). The statutes, however, also codify some degree of flexibility in their application, presumably due to the fact that prejudgment remedies may be sought and obtained at any time during litigation, including, as in the present case, during the pendency of an action or even postjudgment. See *Gagne* v. *Vaccaro*, 80 Conn. App. 436, 451–54, 835 A.2d 491 (2003) (prejudgment remedy may be sought and ordered postjudgment to protect plaintiff's interest in judgment while awaiting outcome of appeal), cert. denied, 268 Conn. 920, 846 A.2d 881 (2004). General Statutes § 52-278h expressly provides in relevant part that an application for prejudgment remedy may be filed "at any time after the institution of the action, *and the forms and procedures provided therein shall be adapted accordingly*." (Emphasis added.) Trial courts, thus, must be afforded some flexibility in the statutory procedures to the extent necessary to further the goals of the prejudgment remedy statutes. Consequently, the failure to strictly comply with all statutory requirements does not automatically implicate the subject matter jurisdiction of a court. See, e.g., *Fort Trumbull Conservancy, LLC* v. *New London*, 282 Conn. 791, 818–19 and n.16, 925 A.2d 292 (2007) (failure to comply with venue provision in statute did not implicate subject matter jurisdiction in same manner as failure to follow statutorily prescribed

time limitations in absence of clear expression of contrary legislative intent). Rather, more often, a failure to comply with statutory requirements will implicate only the court's authority to act in accordance with the statute, not the court's subject matter jurisdiction. See *Amodio* v. *Amodio*, supra, 247 Conn. 728 ("[a]lthough related, the court's authority to act pursuant to a statute is different from its subject matter jurisdiction").

Because the defendants argue that this court's decision in *Lauf* v. *James*, 33 Conn. App. 223, 635 A.2d 300 (1993), is controlling with respect to their "jurisdictional" claim, we briefly turn to a discussion of that case. The plaintiff in *Lauf* initiated a civil action against the defendant alleging that he had sexually assaulted her on various occasions. See id., 224–25. With her complaint, the plaintiff filed an application for a prejudgment remedy seeking to attach real property of the defendant in the amount of $500,000. Id. The plaintiff attached to her application "what purported to be an affidavit of the plaintiff averring to the facts contained in the complaint. This affidavit had been faxed to the plaintiff in California where she signed it and then faxed it back to her attorney in Connecticut. Upon receipt of the faxed affidavit, the attorney took the plaintiff's acknowledgement over the telephone." Id., 225. At a hearing on the prejudgment remedy, the defendant moved to dismiss or strike the application because, according to the defendant, due to the manner in which it was acknowledged, the purported affidavit was not, in fact, an affidavit and, thus, did not satisfy statutory requirements. Id. The trial court denied the motion and later granted the application for prejudgment remedy. Id., 225–26. The defendant appealed. Id., 224.

This court reversed the decision of the trial court granting the application for the prejudgment remedy. Id. Although the court used somewhat imprecise language in *Lauf*, it recognized the distinction between

the court's subject matter jurisdiction and what we now commonly refer to as the court's authority to act, stating that "[t]here are three separate elements of the jurisdiction of a court: jurisdiction over the person, jurisdiction over the subject matter, and *jurisdiction to render the particular judgment*." (Emphasis added.) Id., 226. The court indicated that the controlling issue on appeal was "whether an affidavit must be submitted along with an application for prejudgment remedy in order for the trial court to order and conduct a hearing on an application for a prejudgment remedy." Id. It further stated that the plaintiff had conceded during oral argument of the appeal "that the purported affidavit did not constitute an affidavit and that [the Appellate Court] should proceed *as if there had been no affidavit submitted with the application for prejudgment remedy*." (Emphasis added.) Id. After concluding that the court had both subject matter jurisdiction and personal jurisdiction over the application, it turned to whether the court nevertheless lacked "jurisdiction" to grant the prejudgment remedy application, which we construe to mean whether the court had statutory authority over the application. Id., 226–27.

The court held that a party seeking a prejudgment remedy must comply with the requirements of the prejudgment remedy statutes and that "one of the prerequisites to the granting of such a remedy is that the plaintiff or some competent person sign an affidavit stating facts sufficient to establish probable cause that judgment will be rendered in the matter in favor of the plaintiff." (Internal quotation marks omitted.) Id., 227–28. The court concluded: "Because, as conceded by the plaintiff, we are to decide this case *as if no affidavit had been filed with the application*, we conclude that the plaintiff failed to comply with the requirements of . . . § 52-278c. Therefore, the trial court did not have jurisdiction

to issue the order granting the prejudgment remedy." (Emphasis added; footnote omitted.) Id., 228.

Turning to the facts of the present case, we begin by noting that the court plainly has jurisdiction over the underlying foreclosure action in which the ex parte application was filed. More importantly, we are not persuaded that the holding in *Lauf* compels the outcome sought by the defendants. This is not a case in which the plaintiff outright failed to provide any affidavits in support of the prejudgment remedy application. The plaintiff directly attached one affidavit to its ex parte application in support of its assertion that the defendants were about to remove from the state, transfer, or otherwise hide proceeds from the settlement of the *Catale* action. The plaintiff also incorporated by reference other affidavits that it previously had filed in support of its motion for summary judgment. Those affidavits contained facts intended to establish probable cause that the plaintiff would prevail in obtaining a foreclosure judgment against the defendants, including a right to recover a deficiency judgment in an amount equal to or greater than the $458,000 prejudgment remedy it sought. Although the defendants claim that the application for prejudgment remedy was statutorily defective because all of the affidavits offered were not directly attached to the application itself, they have cited to no statutory language or any other authority, nor have we found any, that would support us extending the holding in *Lauf* and concluding that an affidavit in support of a prejudgment remedy must be directly attached to the application itself rather than incorporated by reference to an earlier pleading.

Nothing in the statutory language of § 52-278e can be read to bar a party from meeting its obligation to provide a supporting affidavit by incorporating by reference an affidavit that is already a part of the record and available to the court and all parties. The Federal

Rules of Civil Procedure expressly permit an exhibit attached to a pleading to be adopted and incorporated by reference in any later pleading or motion. Fed. R. Civ. P. 10 (c).[16] We see no reason why a different rule should apply in the courts of this state. In fact, it would serve little purpose to require a plaintiff to attach to its application affidavits that the court already has before it and that had previously been served on the defendants.

In sum, we are not convinced that the plaintiff failed to comply with the requirements of the prejudgment remedy statutes by incorporating by reference some of the affidavits provided in support of its application. Accordingly, we conclude that the court both had subject matter jurisdiction over the application and that the application was not defective, such that it deprived the court of statutory authority to adjudicate it. We therefore reject the defendants' claim to the contrary.

II

The defendants next claim that, even if the court had jurisdiction over the ex parte application, it improperly acted on it without providing the defendants with a prompt postattachment hearing as due process requires. For the following reasons, we conclude that this claim and all of its related arguments are now moot.

"Mootness presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition of affairs between the parties. . . . Since mootness implicates subject matter jurisdiction . . . it can be raised at any stage of the proceedings. . . . A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists. . . . An issue is

[16] Rule 10 (c) of the Federal Rules of Civil Procedure provides: "A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes."

moot when the court can no longer grant any practical relief. . . . Whenever a claim of lack of jurisdiction is brought to the court's attention, it must be resolved before the court can proceed. . . . The test for determining mootness of an appeal is whether there is any practical relief this court can grant the appellant. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . If no practical relief can be afforded to the parties, the appeal must be dismissed." (Internal quotation marks omitted.) *Federal Deposit Ins. Corp.* v. *Caldrello*, 79 Conn. App. 384, 390, 830 A.2d 767 (2003).

The gravamen of the defendants' remaining nonjurisdictional arguments is that their rights to due process were violated because they were not afforded any meaningful opportunity to be heard regarding probable cause to support a prejudgment remedy. Subsequent to the filing of the current appeal, however, the court granted summary judgment as to the defendants' liability on the mortgage note and later rendered a judgment of strict foreclosure in favor of the plaintiff in the underlying action. It is axiomatic that the probable cause standard is lower than that required to demonstrate proof by a preponderance of the evidence, the standard needed to obtain a judgment in a foreclosure matter. See *TES Franchising, LLC* v. *Feldman*, 286 Conn. 132, 137, 943 A.2d 406 (2008); *GMAC Mortgage, LLC* v. *Ford*, 144 Conn. App. 165, 176, 73 A.3d 742 (2013). Because the plaintiff has prevailed on the merits of its action, this conclusively has established that there is probable cause for a prejudgment remedy, and any remand for a hearing regarding probable cause would, at this stage of the proceedings, be meaningless. Moreover, as we have already indicated, the existence of an appeal from the foreclosure judgment does not affect this conclusion.

Similarly, the judgment rendered establishes that insufficient equity in the property exists to cover the total debt owed by the defendants to the plaintiff and that this deficiency exceeds the $458,000 prejudgment remedy now in place. Accordingly, any opportunity to be heard regarding the amount of the existing prejudgment remedy could provide no practical relief to the defendants and would amount to nothing more than a waste of judicial resources.[17] As previously stated in footnote 13 of this opinion, nothing in our analysis should be viewed as deterring the defendants from seeking a modification or dissolution of the existing prejudgment remedy, if such action is deemed warranted, by filing an appropriate motion with the trial court.

The judgment is affirmed with respect to that portion of the appeal challenging the trial court's jurisdiction over the plaintiff's ex parte application for prejudgment remedy; the remainder of the appeal is dismissed as moot.

In this opinion the other judges concurred.

[17] The defendants raise a number of arguments as to why their claims are not moot, all of which we have considered and determine lack sufficient merit to warrant any extended discussion. They further argue that, even if their claims are moot, we should review them under the "capable of repetition, yet evading review" exception to the mootness doctrine. See *Loisel* v. *Rowe*, 233 Conn. 370, 382, 660 A.2d 323 (1995). We are not persuaded that the defendants have established that this exception to the mootness doctrine is applicable under the circumstances of this case. See id. The defendants also argue that their creditors' may be affected with respect to their priority to recover funds subject to the prejudgment remedy order and that some practical relief might flow to them as a result of our review of the remaining claims on appeal. The defendants have no standing, however, to assert and rely on rights and interests of third parties to overcome mootness. See *Ganim* v. *Smith & Wesson Corp.*, 258 Conn. 313, 347–48, 780 A.2d 98 (2001) ("[w]here . . . the harms asserted to have been suffered directly by a [party] are in reality derivative of injuries to a third party, the injuries are not direct but are indirect, and the [party] has no standing to assert them"). The question is whether any practical relief may be granted to the parties, and we answer that question in the negative.

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July 12, 2022

NOTICE

SUPERIOR COURT

On June 10, 2022, the judges of the Superior Court adopted the amendments to the Practice Book contained in this Notice. Those amendments become effective on January 1, 2023, except that the amendments to Section 2-27 become effective on October 1, 2022.

Attest:

Joseph J. Del Ciampo
Counsel to the Rules Committee
Director of Legal Services

INTRODUCTION

Contained herein are amendments to the Rules of Professional Conduct, the Superior Court Rules, and Forms. These amendments are indicated by brackets for deletions and underlines for added language. The designation ''NEW'' is printed with the title of each new rule and form. This material should be used as a supplement to the Practice Book until the next edition becomes available.

The Amendment Notes to the Rules of Professional Conduct and the Commentaries to the Superior Court Rules are for informational purposes only.

Rules Committee of the
Superior Court

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AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.15. Safekeeping Property

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

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

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

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

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

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

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

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

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

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

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

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law

or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) have interests, the property shall be kept separate by the lawyer until any competing interests are resolved. The lawyer shall promptly distribute all portions of the property as to which the lawyer is able to identify the parties that have interests and as to which there are no competing interests. Where there are competing interests in the property or a portion of the property, the lawyer shall segregate and safeguard the property subject to the competing interests.

(g) The word ''interest(s)'' as used in this subsection and subsections (e) and (f) means more than the mere assertion of a claim by a third party. In the event a lawyer is notified by a third party or a third party's agent of a claim to funds held by the lawyer on behalf of a client, but it is unclear to the lawyer whether the third party has a valid interest within the meaning of this Rule, the lawyer may make a written request that the third party or third party's agent provide the lawyer such reasonable information and/or documentation as needed to assist the lawyer in determining whether substantial grounds exist for the third party's claim to the funds. If the third party or third party's agent fails to comply with such a request within sixty days, the lawyer may distribute the funds in question to the client.

(h) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in

excess of the costs incurred to secure such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

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

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

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

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

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

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

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

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account

that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

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

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

(A) Each June [mail to] shall publish on the designated organization's website a detailed annual report of all funds disbursed under the program, including the amount disbursed to each recipient of funds, and shall cause to be published in the Connecticut Law Journal a notice that the detailed annual report is available on the designated organization's website, along with a link to the report that can be accessed by members of the public as well as each judge of the Superior Court, and mail to each lawyer or law firm participating in the program a copy of that detailed annual report [of all funds disbursed under the program including the amount disbursed to each recipient of funds];

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the Superior Court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and

advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

(C) Allow the Judicial Branch access to its books and records upon reasonable notice;

(D) Submit to audits by the Judicial Branch; and

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

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

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

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

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

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

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

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

(6) Nothing in this subsection (i) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

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

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

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

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

(2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited,

the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or

withdrawals, and the names of all persons or entities to whom such funds were disbursed;

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

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

(5) copies of bills for legal fees and expenses rendered to clients; (6) copies of records showing disbursements on behalf of clients; (7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;

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

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

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

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

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

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

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

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

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

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

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

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

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients' funds account funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

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

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

the client, conveying an interest in the funds or other property to another person or entity.

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

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

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

Subsection (j) requires that lawyers maintain client trust account records, including the physical or electronic equivalents of all check-

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

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the interbank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including

bill payments, business-to-business payments, and government payments (e.g., tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection (j) (8).

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

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

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

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

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

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

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

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

Subsections (m) and (n) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of

these records. For the purposes of these Rules, the terms ''law firm,'' ''partner,'' and ''reasonable'' are defined in accordance with Rules 1.0 (d), (h), and (i) of the Rules of Professional Conduct.

AMENDMENT NOTE: The changes to this rule authorize the administrator of the IOLTA program to distribute electronically to the judges its annual report required by the rule.

Rule 5.5. Unauthorized Practice of Law

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

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

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

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

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

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

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

(3) are in or reasonably related to a pending or potential mediation or other alternative dispute resolution proceeding in this or another jurisdiction, with respect to a matter that is substantially related to, or arises in, a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or (4) are not within subdivisions (c) (2) or (c) (3) and arise out of or are substantially related to the legal services provided to an existing client of the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, who is in good standing in each jurisdiction in which he or she has been admitted, or who has taken retirement status or otherwise left the active practice of law while in good standing in another jurisdiction, may participate in the provision of uncompensated pro bono publico legal services in Connecticut where such services are offered under the supervision of an organized legal aid society or state or local bar association project.

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

(1) the lawyer is authorized to provide pursuant to Practice Book Section 2-15A and the lawyer is an authorized house counsel as provided in that section; or

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

(f) To the extent that a lawyer is physically present in this jurisdiction and remotely engages in the practice of law as authorized under the laws of another United States jurisdiction in which that lawyer is admitted, such conduct does not constitute the practice of law in this jurisdiction.

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

[(g)**]** (h) A lawyer desirous of obtaining the privileges set forth in subsection (c) (3) or (4):

(1) shall notify the statewide bar counsel as to each separate matter prior to any such representation in Connecticut;

(2) shall notify the statewide bar counsel upon termination of each such representation in Connecticut; and

(3) shall pay such fees as may be prescribed by the Judicial Branch.

COMMENTARY: A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted

to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Subsection (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer's assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

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

Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates subsection (b) (1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 (a) and 7.5 (b). A lawyer not admitted to practice in this jurisdiction who engages in repeated and frequent activities of a similar nature in this jurisdiction such as the preparation and/or recording of legal documents (loans and mortgages) involving resi-

dents or property in this state may be considered to have a systematic and continuous presence in this jurisdiction that would not be authorized by this Rule and could, thereby, be considered to constitute unauthorized practice of law.

There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Subsection (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of subdivisions (e) (1) and (e) (2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here. There is no single test to determine whether a lawyer's services are provided on a ''temporary basis'' in this jurisdiction and may, therefore, be permissible under subsection (c). Services may be ''temporary'' even though the lawyer provides services in this jurisdiction for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Subsections (c), **[**and**]** (d) and (f) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word ''admitted'' in subsections (c), **[**and**]** (d) and (f) contemplates that the lawyer is authorized to practice in the jurisdic-

tion in which the lawyer is admitted and excludes a lawyer who, while technically admitted, is not authorized to practice, because, for example, the lawyer is in an inactive status.

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

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

Subdivision (c) (2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client,

interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

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

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

Subdivision (c) (4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction if they arise out of or are substantially related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within

subdivision (c) (2) or (c) (3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

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

For purposes of subsection (d), an attorney in ''good standing'' is one who: (1) has been admitted to practice law in any United States jurisdiction; (2) is not suspended or disbarred in any other jurisdiction; (3) has never resigned or retired from the practice of law while subject to discipline or disciplinary proceedings in any other jurisdiction; (4)

has not been placed on inactive status while subject to discipline or disciplinary proceedings in any other jurisdiction; and (5) is not currently subject to disciplinary proceedings in any other jurisdiction.

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

A lawyer who practices law in this jurisdiction pursuant to subsection (c), (d) or (e) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5 (a). In some circumstances, a lawyer who practices law in this jurisdiction pursuant to subsection (c), (d) or (e) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction.

Subsections (c), (d), **[**and**]** (e) and (f) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

Subsection (f) reflects the reality that with the advancement of technology, many lawyers work remotely from locations outside the jurisdiction(s) in which they are admitted to practice law. Subsection (f) allows those lawyers to practice law as authorized in the jurisdiction(s) in which they are admitted while physically present in Connecticut. This subsection coordinates with Practice Book Section 2-44A (c), which provides that a lawyer admitted in another United States jurisdiction engaged in the remote practice of law as authorized by that jurisdiction

while physically present in Connecticut is not engaged in the practice of law in this jurisdiction.

AMENDMENT NOTE: The changes to this rule and to Practice Book Section 2-44A address the issue of remote practice and provide that to the extent that a lawyer is physically present in Connecticut and remotely engaged in the practice of law under the law of another recognized jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in Connecticut.

AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

Sec. 1-11A. Media Coverage of Arraignments

(a) The broadcasting, televising, recording, or taking photographs by media in the courtroom during arraignments may be authorized by the judicial authority presiding over such arraignments in the manner set forth in this section, as implemented by the judicial authority.

(b) Any media representative desiring to broadcast, televise, record or photograph an arraignment shall send an e-mail request for electronic coverage to a person designated by the chief court administrator to receive such requests. Said designee shall promptly transmit any such request to the administrative judge, presiding judge of criminal matters, arraignment judge, clerk and the supervising marshal. The administrative judge shall ensure that notice is provided to the state's attorney and the attorney for the defendant or, where the defendant is unrepresented, to the defendant. Electronic coverage shall not be permitted until the state's attorney and the attorney for the defendant,

or the defendant if he or she has no attorney, have had an opportunity to object to the request on the record and the judicial authority has ruled on the objection. If a request for coverage is denied or is granted over the objection of any party, the judicial authority shall articulate orally or in writing the reasons for its decision on the request and such decision shall be final.

(c) Broadcasting, televising, recording or photographing of the following are prohibited:

(1) any criminal defendant who has not been made subject to an order for electronic coverage and, to the extent practicable, any person other than court personnel or other participants in the arraignment for which electronic coverage is permitted;

(2) conferences involving the attorneys and the judicial authority at the bench or communications between the defendant and his or her attorney or other legal representative;

(3) close ups of documents of counsel, the clerk or the judicial authority;

(4) the defendant while exiting or entering the lockup;

(5) to the extent practicable, any restraints on the defendant;

(6) to the extent practicable, any judicial marshals or Department of Correction employees escorting the defendant while he or she is in the courtroom; and

(7) proceedings in cases transferred from juvenile court prior to a determination by the adult court that the matter was properly transferred.

(d) Only one (1) still camera, one (1) television camera and one (1) audio recording device, which do not produce a distracting sound or light, shall be employed to cover the arraignment, unless otherwise ordered by the judicial authority.

(e) The operator of any camera, television or audio recording equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom.

(f) All personnel and equipment shall be situated in an unobtrusive manner within the courtroom. The location of any such equipment and personnel shall be determined by the judicial authority. The location of the camera, to the extent possible, shall provide access to optimum coverage. Once the judicial authority designates the position for a camera, the operator of the camera must remain in that position and not move about until the arraignment is completed.

(g) Videographers, photographers and equipment operators must conduct themselves in the courtroom quietly and discreetly, with due regard for the dignity of the courtroom.

(h) If there are multiple requests to broadcast, televise, record or photograph the same arraignment, the media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the judicial authority. The judicial authority shall not mediate any disputes among the media regarding pooling arrangements.

(i) On camera reporting and interviews shall only be conducted outside of the courthouse.

COMMENTARY: The change to subsection (b) clarifies that the person to whom the media e-mails a request for electronic coverage is the person designated by the chief court administrator to receive the request.

The change to subsection (h) makes it clear that the judicial authority shall not mediate any disputes among the media regarding pooling arrangements. There is similar language in subsection (m) of Section 1-11B and subsection (o) of Section 1-11C. This new language provides consistency among all of the rules concerning camera coverage of proceedings.

Sec. 1-11B. Media Coverage of Civil Proceedings

(a) The broadcasting, televising, recording or photographing of civil proceedings and trials in the Superior Court by news media should be allowed, subject to the limitations set forth herein and in Section 1-10B.

(b) A judicial authority shall permit broadcasting, televising, recording or photographing of civil proceedings and trials in courtrooms of the Superior Court except as hereinafter precluded or limited. As used in this rule, the word ''trial'' in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness.

(c) Any party, attorney, witness or other interested person may object in advance of electronic coverage of a civil proceeding or trial if there exists a substantial reason to believe that such coverage will undermine the legal rights of a party or will significantly compromise the safety of a witness or other interested person or impact significant

privacy concerns. To the extent practicable, notice that an objection to the electronic coverage has been filed, and the date, time and location of the hearing on such objection shall be posted on the Judicial Branch website. Any person, including the media, whose rights are at issue in considering whether to allow electronic coverage of the proceeding or trial, may participate in the hearing to determine whether to limit or preclude such coverage. When such objection is filed by any party, attorney, witness or other interested person, the burden of proving that electronic coverage of the civil proceeding or trial should be limited or precluded shall be on the person who filed the objection.

(d) The judicial authority, in deciding whether to limit or preclude electronic coverage of a civil proceeding or trial, shall consider all rights at issue and shall limit or preclude such coverage only if there exists a compelling reason to do so, there are no reasonable alternatives to such limitation or preclusion, and such limitation or preclusion is no broader than necessary to protect the compelling interest at issue.

(e) If the judicial authority has a substantial reason to believe that the electronic coverage of a civil proceeding or trial will undermine the legal rights of a party or will significantly compromise the safety or significant privacy concerns of a party, witness or other interested person, and no party, attorney, witness or other interested person has objected to such coverage, the judicial authority shall schedule a hearing to consider limiting or precluding such coverage. To the extent practicable, notice that the judicial authority is considering limiting or precluding electronic coverage of a civil proceeding or trial, and the date, time and location of the hearing thereon shall be given to the

parties and others whose interests may be directly affected by a decision so that they may participate in the hearing and shall be posted on the Judicial Branch website.

(f) Objection raised during the course of a civil proceeding or trial to the photographing, videotaping or audio recording of specific aspects of the proceeding or trial, or specific individuals or exhibits will be heard and decided by the judicial authority, based on the same standards as set out in subsection (d) of this section used to determine whether to limit or preclude coverage based on objections raised before the start of a civil proceeding or trial.

(g) The trial judge in his or her discretion, upon the judge's own motion or at the request of a participant, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. ''Participant'' for the purpose of this section shall mean any party, lawyer or witness.

(h) The judicial authority shall articulate the reasons for its decision on whether or not to limit or preclude electronic coverage of a civil proceeding or trial and such decision shall be final.

(i) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses

shall not be changed within the courtroom except during a recess or other appropriate time in the trial.

(j) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the trial. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the trial judge and other appropriate authority.

(k) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

(*l*) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(m) **[**The judicial authority in its discretion may require pooling arrangements by the media. Pool representatives should ordinarily be used for video, still cameras and radio, with each pool representative to be decided by the relevant media group. Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the trial.**]** If there are multiple requests to broadcast, televise, record or photograph the same civil proceeding or trial, the

media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the judicial authority. The judicial authority shall not mediate any disputes among the media regarding pooling arrangements.

(n) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a civil proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, **[**submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried**]** send an e-mail request for media coverage to a person designated by the chief court administrator to receive such requests. **[**A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool.**]** The **[**administrative judge**]** designee shall inform the administrative judge, presiding judge of civil matters, judicial authority who will hear the proceeding or who will preside over the trial, clerk, and the supervising marshal of the **[**notice**]** request, and the judicial authority shall allow such coverage except as otherwise provided in this section. **[**Any news organization seeking permission to participate in a pool whose name was not submitted with the original notice of media coverage may, at any time, submit a separate written notice to the administrative judge and shall be allowed to participate in the pool arrangement.**]**

(o) To evaluate and resolve prospective problems where broadcasting, televising, recording or photographing of a civil proceeding or trial will take place, and to ensure compliance with these rules during the

proceeding or trial, the judicial authority who will hear the proceeding or preside over the trial may require the attendance of attorneys and media personnel at a pretrial conference. At such conference, the judicial authority shall set forth the conditions of coverage in accordance herewith.

COMMENTARY: The change to subsection (m) simplifies the rule requiring the media to make pooling arrangements among themselves and reiterates that the judicial authority shall not mediate any disputes. The changes to subsection (n) make the following changes to the camera rules impacting civil proceedings: (1) clarifies that the media must e-mail their requests only to a person designated by the chief court administrator to receive such requests rather than the respective administrative judge; (2) removes the requirement that the pool media organization provide a list of all news organizations seeking to participate in the pool; (3) clarifies that the person designated by the chief court administrator will inform the following people of the request: administrative judge, presiding judge of civil matters, judicial authority who will hear the proceeding or who will preside over the trial, clerk and the supervising marshal; and (4) removes the requirement for news organizations whose names were not originally included in the pool arrangement to submit a request to the administrative judge to be included in the pool. The requirement for the pool media organization to provide a list of all news organizations seeking to participate in the pool is obsolete. Current practice is that the news organizations work out all of the pooling logistics among themselves.

Sec. 1-11C. Media Coverage of Criminal Proceedings

(a) Except as authorized by Section 1-11A regarding media coverage of arraignments, the broadcasting, televising, recording or photographing by media of criminal proceedings and trials in the Superior Court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in Section 1-10B.

(b) Except as provided in subsection (q) of this section, no broadcasting, televising, recording or photographing of trials or proceedings involving sexual offense charges shall be permitted.

(c) As used in this rule, the word ''trial'' in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness. ''Criminal proceeding'' shall mean any hearing or testimony, or any portion thereof, in open court and on the record except an arraignment subject to Section 1-11A.

(d) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a criminal proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, **[**submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried**]** send an e-mail request for media coverage to a person designated by the chief court administrator to receive such requests. **[**A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool.**]** The **[**administrative judge**]** designee shall inform the administrative judge, presiding judge of criminal mat-

ters, judicial authority who will hear the proceeding or who will preside over the trial, clerk, and the supervising marshal of the [notice] request, and the judicial authority shall allow such coverage except as otherwise provided.

(e) Any party, attorney, witness or other interested person may object in advance of electronic coverage of a criminal proceeding or trial if there exists a substantial reason to believe that such coverage will undermine the legal rights of a party or will significantly compromise the safety of a witness or other person or impact significant privacy concerns. In the event that the media request camera coverage and, to the extent practicable, notice that an objection to the electronic coverage has been filed, the date, time and location of the hearing on such objection shall be posted on the Judicial Branch website. Any person, including the media, whose rights are at issue in considering whether to allow electronic coverage of the proceeding or trial, may participate in the hearing to determine whether to limit or preclude such coverage. When such objection is filed by any party, attorney, witness or other interested person, the burden of proving that electronic coverage of the criminal proceeding or trial should be limited or precluded shall be on the person who filed the objection.

(f) The judicial authority, in deciding whether to limit or preclude electronic coverage of a criminal proceeding or trial, shall consider all rights at issue and shall limit or preclude such coverage only if there exists a compelling reason to do so, there are no reasonable alternatives to such limitation or preclusion, and such limitation or preclusion is no broader than necessary to protect the compelling interest at issue.

(g) If the judicial authority has a substantial reason to believe that the electronic coverage of a criminal proceeding or trial will undermine the legal rights of a party or will significantly compromise the safety or privacy concerns of a party, witness or other interested person, and no party, attorney, witness or other interested person has objected to such coverage, the judicial authority shall schedule a hearing to consider limiting or precluding such coverage. To the extent practicable, notice that the judicial authority is considering limiting or precluding electronic coverage of a criminal proceeding or trial, and the date, time and location of the hearing thereon shall be given to the parties and others whose interests may be directly affected by a decision so that they may participate in the hearing and shall be posted on the Judicial Branch website.

(h) Objection raised during the course of a criminal proceeding or trial to the photographing, videotaping or audio recording of specific aspects of the proceeding or trial, or specific individuals or exhibits will be heard and decided by the judicial authority, based on the same standards as set out in subsection (f) of this section used to determine whether to limit or preclude coverage based on objections raised before the start of a criminal proceeding or trial.

(i) The judge presiding over the proceeding or trial in his or her discretion, upon the judge's own motion or at the request of a participant, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime,

police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. ''Participant'' for the purpose of this section shall mean any party, lawyer or witness.

(j) The judicial authority shall articulate the reasons for its decision on whether or not to limit or preclude electronic coverage of a criminal proceeding or trial, and such decision shall be final.

(k) (1) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned in such location in the courtroom as shall be designated by the trial judge. Microphones, related wiring and equipment essential for the broadcasting, televising or recording shall be unobtrusive and shall be located in places designated in advance by the trial judge. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only.

(2) Only one still camera photographer shall be permitted in the courtroom. The still camera photographer shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the still camera photographer shall photograph court proceedings from this designated location only.

(3) Only one audio recorder shall be permitted in the courtroom for purposes of recording the proceeding or trial. Microphones, related wiring and equipment essential for the recording shall be unobtrusive and shall be located in places designated in advance by the trial judge.

(*l*) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the

proceeding or trial. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the judge presiding over the proceeding or trial and other appropriate authority.

(m) Except as provided by these rules, broadcasting, televising, recording and photographing in areas immediately adjacent to the courtroom during sessions of court or recesses between sessions shall be prohibited.

(n) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(o) **[**The judicial authority in its discretion may require pooling arrangements by the media. Pool representatives should ordinarily be used for video, still cameras and radio, with each pool representative to be decided by the relevant media group. Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the proceeding or trial.**]** If there are multiple requests to broadcast, televise, record or photograph the same criminal proceeding or trial, the media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the judicial authority. The judicial authority shall not

mediate any disputes among the media regarding pooling arrangements.

(p) To evaluate and resolve prospective problems where broadcasting, televising, recording or photographing by media of a criminal proceeding or trial will take place, and to ensure compliance with these rules during the proceeding or trial, the judicial authority who will hear the proceeding or preside over the trial may require the attendance of attorneys and media personnel at a pretrial conference.

(q) In a homicide case involving sexual assault, the broadcasting, televising, recording or photographing by the media of the trial may be permitted by the judicial authority, provided that the victim's family affirmatively consents to such coverage, that no member of the victim's family objects to such coverage, and that the victim's family have been notified. As used in this section, ''victim's family'' shall mean a person's spouse, parent, grandparent, stepparent, aunt, uncle, niece, nephew, child, including a natural born child, stepchild and adopted child, grandchild, brother, sister, half brother or half sister or parent of a person's spouse.

COMMENTARY: The changes to subsection (d) make the following changes to the camera rules impacting criminal proceedings: (1) clarifies that the media must e-mail their requests only to a person designated by the chief court administrator to receive such requests rather than the respective administrative judge; (2) removes the requirement that the pool media organization provide a list of all news organizations seeking to participate in the pool; and (3) clarifies that the person designated by the chief court administrator will inform the following

people of the request: administrative judge, presiding judge of criminal matters, judicial authority who will hear the proceeding or who will preside over the trial, clerk and the supervising marshal. The requirement for the pool media organization to provide a list of all news organizations seeking to participate in the pool is obsolete. Current practice is that the news organizations work out all of the pooling logistics among themselves.

The change to subsection (o) simplifies the rule requiring the media to make pooling arrangements among themselves and reiterates that the judicial authority shall not mediate any disputes.

Sec. 2-4A. —Records of Bar Examining Committee

(a) All records of the bar examining committee, including transcripts, if any, of hearings conducted by the bar examining committee or the several standing committees on recommendations for admission to the bar shall not be public.

(b) Unless otherwise ordered by the court, all records that are not public shall be available only to the bar examining committee and its counsel, the statewide grievance committee and its counsel, disciplinary counsel, the client security fund committee and its counsel, a judge of the Superior Court or, with the consent of the applicant, to any other person.

COMMENTARY: The changes to this section are made for clarity.

Sec. 2-5. —Examination of Candidates for Admission

The bar examining committee shall further have the duty, power and authority to provide for the examination of candidates for admission

to the bar; to determine whether such candidates are qualified as to prelaw education, legal education, good moral character and fitness to practice law; and to recommend **[**to the court**]** for admission to the bar qualified candidates.

COMMENTARY: The change to this section facilitates the option of admission to the bar in absentia.

Sec. 2-8. Qualifications for Admission

To entitle an applicant to admission to the bar, except under Section 2-13 or 2-13A of these rules, the applicant must satisfy the bar examining committee that:

(1) The applicant is a citizen of the United States or an alien lawfully residing in the United States, which shall include an individual authorized to work lawfully in the United States.

(2) The applicant is not less than eighteen years of age.

(3) The applicant is a person of good moral character, is fit to practice law, and has either passed an examination in professional responsibility which has been approved or required by the committee or has completed a course in professional responsibility in accordance with the regulations of the committee. Any inquiries or procedures used by the bar examining committee that relate to physical or mental disability must be narrowly tailored and necessary to a determination of the applicant's current fitness to practice law, in accordance with the Americans with Disabilities Act and amendment twenty-one of the Connecticut constitution, and conducted in a manner consistent with privacy rights afforded under the federal and state constitutions or other applicable law.

(4) The applicant has met the educational requirements as may be set, from time to time, by the bar examining committee.

(5) The applicant has filed with the administrative director of the bar examining committee an application to take the examination and for admission to the bar, all in accordance with these rules and the regulations of the committee, and has paid such application fee as the committee shall from time to time determine.

(6) The applicant has passed an examination in law in accordance with the regulations of the bar examining committee.

(7) The applicant has complied with all of the pertinent rules and regulations of the bar examining committee.

(8) As an alternative to satisfying the bar examining committee that the applicant has met the committee's educational requirements, the applicant who meets all the remaining requirements of this section may, upon payment of such investigation fee as the committee shall from time to time determine, substitute proof satisfactory to the committee that: (A) the applicant has been admitted to practice before the highest court of original jurisdiction in one or more states, the District of Columbia or the Commonwealth of Puerto Rico or in one or more district courts of the United States for ten or more years and at the time of filing the application is a member in good standing of such a bar; (B) the applicant has actually practiced law in such a jurisdiction for not less than five years during the seven year period immediately preceding the filing date of the application; and (C) the applicant intends, upon a continuing basis, actively to practice law in Connecticut

and to devote the major portion of the applicant's working time to the practice of law in Connecticut.

COMMENTARY: The change to this section recognizes that one should refer to Section 2-13A for the qualifications for temporary licensing as a military spouse instead of Section 2-8.

Sec. 2-9. Certification of Applicants Recommended for Admission; Conditions of Admission

(a) The bar examining committee shall certify **[**to the clerk of the Superior Court for the Judicial District where the applicant has his or her correspondence address**]** the name<u>s</u> of **[**any such**]** applicant<u>s</u> recommended by it for admission to the bar and shall notify the applicant<u>s</u> of its decision.

(b) The bar examining committee may, in light of the health diagnosis, treatment, or drug or alcohol dependence of an applicant that has caused conduct or behavior that would otherwise have rendered the applicant currently unfit to practice law, determine that it will only recommend an applicant for admission to the bar conditional upon the applicant's compliance with conditions prescribed by the committee relevant to the health diagnosis, treatment, or drug or alcohol dependence or fitness of the applicant. Such determination shall be made after a hearing on the record is conducted by the committee or a panel thereof consisting of at least three members appointed by the chair, unless such hearing is waived by the applicant. Such conditions shall be tailored to detect recurrence of the conduct or behavior which could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued treatment, abstinence, or other

support. The conditional admission period shall not exceed five years, unless the conditionally admitted attorney fails to comply with the conditions of admission, and the committee or the court determines, in accordance with the procedures set forth in Section 2-11, that a further period of conditional admission is necessary. The committee shall notify the applicant by mail of its decision and that the applicant must sign an agreement with the committee under oath affirming acceptance of such conditions and that the applicant will comply with them. Upon receipt of this agreement from the applicant, duly executed, the committee shall recommend the applicant for admission to the bar as provided herein. The committee shall forward a copy of the agreement to the statewide bar counsel, who shall be considered a party for purposes of defending an appeal under Section 2-11A.

COMMENTARY: The changes to this section facilitate the option of admission to the bar in absentia.

Sec. 2-10. Admission by Superior Court; Admission in Absentia

(a) Each applicant who shall be recommended for admission to the bar, except under subsection (c), shall present himself or herself to the Superior Court, or to either the Supreme Court or the Appellate Court sitting as the Superior Court, at such place and at such time as shall be prescribed by the bar examining committee, or shall be prescribed by the Supreme Court or the Appellate Court, and such court may then, upon motion, admit such person as an attorney. The administrative director shall give notice to each clerk of the names of the newly admitted attorneys. At the time such applicant is admitted

as an attorney, the applicant shall be sworn as a Commissioner of the Superior Court.

(b) The administrative judge of said judicial district or a designee or the chief justice of the Supreme Court or a designee or the chief judge of the Appellate Court or a designee may deliver an address to the applicants so admitted respecting their duties and responsibilities as attorneys.

(c) The bar examining committee may, upon election by a candidate, recommend the candidate for admission in absentia. Upon the administration of the oaths taken as Commissioner of the Superior Court and for admission to the bar by an official duly qualified to administer oaths, the candidate who has taken the oaths shall be admitted to the Connecticut bar in absentia. The candidate shall complete the oaths and submit the original affidavits to the bar examining committee within 180 days from the date of certification.

COMMENTARY: The changes to this section facilitate the option of admission to the bar in absentia.

Sec. 2-13. Attorneys of Other Jurisdictions; Qualifications and Requirements for Admission

(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the bar examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut, and that (i) at least one jurisdiction in which he or she is a member of the bar is reciprocal to Connecticut in that it would admit a member of the bar of Connecticut to its bar without examination under provisions

similar to those set out in this section or (ii) he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction, shall satisfy the committee that he or she:

(1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility or has completed a course in professional responsibility in accordance with the regulations of the committee;

(2) has been duly licensed to practice law before the highest court of a reciprocal state or territory of the United States or in the District of Columbia if reciprocal to Connecticut, or that he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood for at least five of the ten years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood for at least five of the ten years immediately preceding the date of the application and is in good standing, provided that such five years of practice shall have occurred subsequent to the applicant's last failed Connecticut examination; and

(3) is a citizen of the United States or an alien lawfully residing in the United States, which shall include an individual authorized to work lawfully in the United States, may be admitted **[**by the court**]** as an

attorney without examination upon written application and the payment of such fee as the committee shall from time to time determine, upon compliance with the following requirements. Such application, duly verified, shall be filed with the administrative director of the committee and shall set forth the applicant's qualifications as hereinbefore provided. The following affidavits shall be filed by the person completing the affidavit:

(A) affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law and supporting, to the satisfaction of the committee, his or her practice of law as defined under subdivision (2) of this subsection;

(B) affidavits from two members of the bar of Connecticut of at least five years' standing, certifying that the applicant is of good moral character and is fit to practice law; and

(C) an affidavit from the applicant, certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and, if so, setting forth the circumstances concerning such action. Such an affidavit is not required if it has been furnished as part of the application form prescribed by the committee.

(b) For the purpose of this rule, the ''practice of law'' shall include the following activities, if performed after the date of the applicant's admission to the jurisdiction in which the activities were performed, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice:

(1) representation of one or more clients in the practice of law;

(2) service as a lawyer with a state, federal, or territorial agency, including military services;

(3) teaching law at an accredited law school, including supervision of law students within a clinical program;

(4) service as a judge in a state, federal, or territorial court of record;

(5) service as a judicial law clerk;

(6) service as authorized house counsel;

(7) service as authorized house counsel in Connecticut before July 1, 2008, or while certified pursuant to Section 2-15A; or

(8) any combination of the above.

COMMENTARY: The changes to this section facilitate the option of admission to the bar in absentia.

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 prior to starting work in the state of Connecticut or three months after the applicant begins work in the state of Connecticut 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.

(5) **Pro Bono Legal Services.** Notwithstanding anything to the contrary in this section, an authorized house counsel may participate in the provision of any and all legal services pro bono publico in Connecticut offered under the supervision of an organized legal aid society or state/local bar association project, or of a member of the Connecticut bar who is also working on the pro bono representation.

(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 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 shall be certified as authorized house counsel in absentia. Upon the administration of the oath taken as authorized house counsel by an official duly qualified to administer oaths, the applicant who has taken the oath shall be certified as authorized house counsel in absentia. The applicant shall complete the oath and submit the original affidavit to the bar examining committee within 180 days from the date of certification. The committee **[**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 changes to this section facilitate the option of admission to the bar in absentia.

Sec. 2-16. —Attorney Appearing Pro Hac Vice

An attorney who is in good standing at the bar of another state, the District of Columbia, or the Commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application on one of the following forms prescribed by the chief court administrator, form JD-CL-141, Application for Permission for Attorney to Appear Pro Hac Vice in a Court Case, or, form JD-CL-142, Application for Permission for Attorney to Appear Pro Hac Vice before a Municipal or State Agency, Commission, Board or Tribunal, presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any state court or a proceeding before any municipal or state agency, commission, board or tribunal (hereinafter referred to as ''proceeding'') in this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant, on form JD-CL-143, Affidavit of Attorney Seeking Permission to Appear Pro Hac Vice, (A) providing the full legal name of the applicant with contact information, including firm name, business mailing address, telephone number and e-mail address,

as applicable, **[**(A)**]** (B) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, **[**(B)**]** (C) certifying that the applicant has paid the client security fund fee due for the calendar year in which the application has been made, **[**(C)**]** (D) designating the chief clerk of the Superior Court for the judicial district in which the attorney will be appearing as his or her agent upon whom process and service of notice may be served, **[**(D)**]** (E) agreeing to register with the Statewide Grievance Committee in accordance with the provisions of this chapter while appearing in the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the Statewide Grievance Committee of the expiration of the two year period, **[**(E)**]** (F) identifying the number of times the attorney has appeared pro hac vice in the Superior Court or in any other proceedings of this state since the attorney first appeared pro hac vice in this state, listing each such case or proceeding by name and docket number, as applicable, and **[**(F)**]** (G) providing any previously assigned juris number, **[**and**]** (2) the filing fee shall be paid with the court for the application submitted pursuant to General Statutes § 52-259 (i) unless Section 62-8A (a) applies and (3) unless excused by the judicial authority, a member of the bar of this state must be present at all proceedings, including depositions in a proceeding, and must sign all pleadings, briefs and other papers filed with the court, local or state administrative agency,

commission, board or tribunal, and assume full responsibility for them and for the conduct of the cause or proceeding and of the attorney to whom such privilege is accorded. **[**Any such application shall be made on a form prescribed by the chief court administrator.**]** Where feasible, the application shall be made to the judge before whom such case is likely to be tried. If not feasible, or if no case is pending before the Superior Court, the application shall be made to the administrative judge in the judicial district where the matter is to be tried or the proceeding is to be conducted. Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, or proceeding, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause or presentation of the proceeding, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the **[**Statewide Grievance Committee**]** Superior Court Operations designee of such action. Any person granted permission to appear in a cause, appeal or proceeding pursuant to this section shall comply with the requirements of Sections 2-68 and 2-70 and General Statutes § 51-81b and shall pay such fee and tax when due as prescribed by those sections for each year such person appears in the matter. If the clerk for the judicial district or appellate court in which the matter is

pending is notified that such person has failed to pay the fee as required by [this section] Sections 2-68 and 2-70, the court shall determine after a hearing the appropriate sanction, which may include termination of the privilege of appearing in the cause, appeal or proceeding.

COMMENTARY: The changes to this section are intended to conform to the provisions of Section 62-8A.

Sec. 2-17. Foreign Legal Consultants; Licensing Requirements

Upon recommendation of the bar examining committee, [the court may license] an applicant may be licensed to practice as a foreign legal consultant, without examination, [an applicant] who:

(1) has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and has engaged in the practice of law in that country, and has been in good standing as an attorney or counselor at law (or the equivalent of either) in that country, for a period of not less than five of the seven years immediately preceding the date of application;

(2) possesses the good moral character and fitness to practice law requisite for a member of the bar of this court; and

(3) is at least twenty-six years of age.

COMMENTARY: The changes to this section facilitate the option of admission to the bar in absentia.

Sec. 2-27. Clients' Funds; Attorney Registration

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct, each attorney or law firm shall maintain, separate from the attorney's or the firm's personal funds, one or more

accounts accurately reflecting the status of funds handled by the attorney or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each attorney or law firm maintaining one or more trust accounts as defined in Rule 1.15 of the Rules of Professional Conduct and Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the attorney or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each attorney or law firm shall retain the records required by Rule 1.15 of the Rules of Professional Conduct for a period of seven years after termination of the representation.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to Rule 1.15 of the Rules of Professional Conduct, shall be made available upon request of the Statewide Grievance Committee or its counsel, or the disciplinary counsel for review, examination or audit upon receipt of notice by the Statewide Grievance Committee of an overdraft notice as provided by Section 2-28 (f). Upon the filing of a grievance complaint or a finding of probable cause, such records shall be made available upon request of the Statewide Grievance Committee, its counsel or the disciplinary counsel for review or audit.

(d) Each attorney shall register with the Statewide Grievance Committee, on a form devised by the committee, the address of the attorney's office or offices maintained for the practice of law, the attorney's office e-mail address and business telephone number, the name and address of every financial institution with which the attorney maintains

any account in which the funds of more than one client are kept and the identification number of any such account. Such registrations will be made on an annual basis and at such time as the attorney changes his or her address or addresses or location or identification number of any such trust account in which the funds of more than one client are kept. The registration forms filed pursuant to this subsection and pursuant to Section 2-26 shall not be public; however, all information obtained by the Statewide Grievance Committee from these forms shall be public, except the following: trust account identification numbers; the attorney's home address, unless no office address is registered and then only if the home address is part of the public record of a grievance complaint as defined in Section 2-50 or the attorney uses the attorney's personal juris number to appear in a matter in this state; the attorney's office e-mail address; and the attorney's birth date. Unless otherwise ordered by the court, all nonpublic information obtained from these forms shall be available only to the Statewide Grievance Committee and its counsel, the reviewing committees, the grievance panels and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee and its counsel, a judge of the Superior Court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the attorney, to any other person. Excluding trust account identification numbers, nonpublic information obtained from these forms shall be available to the Department of

Revenue Services in connection with the collection of the occupational tax on attorneys pursuant to General Statutes § 51-81b. In addition, the trust account identification numbers on the registration forms filed pursuant to Section 2-26 and this section shall be available to the organization designated by the judges of the Superior Court to administer the IOLTA program pursuant to Rule 1.15 of the Rules of Professional Conduct. The registration requirements of this subsection shall not apply to judges of the Supreme, Appellate or Superior Courts, judge trial referees, family support magistrates, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges.

(e) The Statewide Grievance Committee or its counsel may conduct random inspections and audits of accounts maintained pursuant to Rule 1.15 of the Rules of Professional Conduct to determine whether such accounts are in compliance with the rule and this section. If any random inspection or audit performed under this subsection discloses an apparent violation of this section or the Rules of Professional Conduct, the matter may be referred to a grievance panel for further investigation or to the disciplinary counsel for presentment to the Superior Court. Any attorney whose accounts are selected for inspection or audit under this section shall fully cooperate with the inspection or audit, which cooperation shall not be construed to be a violation of Rule 1.6 (a) of the Rules of Professional Conduct. Any records, documents or information obtained or produced pursuant to a random inspection or audit shall remain confidential unless and until a presentment is initiated by the disciplinary counsel alleging a violation of Rule

1.15 of the Rules of Professional Conduct or of this section, or probable cause is found by the grievance panel, the Statewide Grievance Committee or are viewing committee. Contemporaneously with the commencement of a presentment or the filing of a grievance complaint, notice shall be given in writing by the Statewide Grievance Committee to any client or third person whose identity may be publicly disclosed through the disclosure of records obtained or produced in accordance with this subsection. Thereafter, public disclosure of such records shall be subject to the client or third person having thirty days from the issuance of the notice to seek a court order restricting publication of any such records disclosing confidential information. During the thirty day period, or the pendency of any such motion, any document filed with the court or as part of a grievance record shall refer to such clients or third persons by pseudonyms or with appropriate redactions, unless otherwise ordered by the court.

(f) Violation of subsection (a), (b) or (c) of this section shall constitute misconduct. An attorney who fails to register in accordance with subsection (d) shall be administratively suspended from the practice of law in this state pursuant to Section 2-27B.

COMMENTARY: The change to this section authorizes the Department of Revenue Services to receive nonpublic information, excluding trust account identification numbers, obtained from the attorney registration process in connection with the collection of the occupational tax on attorneys pursuant to General Statutes § 51-81b.

Sec. 2-44A. Definition of the Practice of Law

(a) General Definition: The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:

(1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.

(2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.

(3) Drafting any legal document or agreement involving or affecting the legal rights of a person.

(4) Representing any person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(5) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is transferred where the advice or counsel, or the representation or purported representation, involves (a) the preparation, evaluation, or interpretation of documents related to such transaction or to implement such transaction or (b) the evaluation or

interpretation of procedures to implement such transaction, where such transaction, documents, or procedures affect the legal rights, obligations, liabilities or interests of such person, and

(6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Connecticut as established by case law, statute, ruling or other authority.

''Documents'' includes, but is not limited to, contracts, deeds, easements, mortgages, notes, releases, satisfactions, leases, options, articles of incorporation and other corporate documents, articles of organization and other limited liability company documents, partnership agreements, affidavits, prenuptial agreements, wills, trusts, family settlement agreements, powers of attorney, notes and like or similar instruments; and pleadings and any other papers incident to legal actions and special proceedings.

The term ''person'' includes a natural person, corporation, company, partnership, firm, association, organization, society, labor union, business trust, trust, financial institution, governmental unit and any other group, organization or entity of any nature, unless the context otherwise dictates.

The term ''Connecticut lawyer'' means a natural person who has been duly admitted to practice law in this state and whose privilege to do so is then current and in good standing as an active member of the bar of this state.

(b) Exceptions. Whether or not it constitutes the practice of law, the following activities by any person are permitted:

(1) Selling legal document forms previously approved by a Connecticut lawyer in any format.

(2) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where:

(A) Such services are confined to representation before such forum or other conduct reasonably ancillary to such representation; and

(B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice.

(3) Serving in a neutral capacity as a mediator, arbitrator, conciliator or facilitator.

(4) Participating in labor negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements.

(5) Providing clerical assistance to another to complete a form provided by a court for the protection from abuse, harassment and violence when no fee is charged to do so.

(6) Acting as a legislative lobbyist.

(7) Serving in a neutral capacity as a clerk or a court employee providing information to the public.

(8) Performing activities which are preempted by federal law.

(9) Performing statutorily authorized services as a real estate agent or broker licensed by the state of Connecticut.

(10) Preparing tax returns and performing any other statutorily authorized services as a certified public accountant, enrolled IRS agent, public accountant, public bookkeeper, or tax preparer.

(11) Performing such other activities as the courts of Connecticut have determined do not constitute the unlicensed or unauthorized practice of law.

(12) Undertaking self-representation, or practicing law authorized by a limited license to practice.

(c) Remote Practice: To the extent that a lawyer is physically present in this jurisdiction and remotely engages in the practice of law as authorized under the laws of another United States jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in this jurisdiction.

[(c)**]** (d) Nonlawyer Assistance: Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

[(d)**]** (e) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

[(e)**]** (f) Governmental Agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out its responsibilities as provided by law.

[(f)**]** (g) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[(g)**]** (h) Unauthorized Practice: If a person who is not authorized to practice law is engaged in the practice of law, that person shall be subject to the civil and criminal penalties of this jurisdiction.

COMMENTARY: The changes to this section and to Rule 5.5 of the Rules of Professional Conduct address the issue of remote practice

and provide that to the extent that a lawyer is physically present in Connecticut and remotely engaged in the practice of law under the law of another recognized jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in Connecticut.

Sec. 2-55A. Retirement of Attorney—Permanent

(a) An attorney who is admitted to the bar in the state of Connecticut and is not the subject of any pending disciplinary investigation may submit a written request on a form approved by the Office of the Chief Court Administrator to the statewide bar counsel for permanent retirement under this section. Upon receipt of the request, the statewide bar counsel shall review it and, if it is found that the attorney is eligible for retirement under this section, shall grant the request and notify the attorney and the clerk for the judicial district of Hartford. Retirement shall not constitute removal from the bar or the roll of attorneys, but it shall be noted on the roll of attorneys kept by the clerk for the judicial district of Hartford. If granted, the attorney shall no longer be eligible to practice law as an attorney admitted in the state of Connecticut.

(b) An attorney who has retired pursuant to this section shall thereafter be exempt from the registration requirements set forth in Sections 2-26 and 2-27 (d) and from payment of the client security fund fee set forth in Section 2-70 (a).

(c) An attorney who has retired pursuant to this section and thereafter wishes to be eligible to practice law again in the state of Connecticut must apply for admission to the bar pursuant to Section**[**s**]** 2-8, **[**or**]** 2-13 or 2-13A.

(d) Retirement pursuant to this section shall not be a bar to the initiation, investigation and pursuit of disciplinary complaints filed on or subsequent to the date of retirement.

COMMENTARY: The changes to this section acknowledge that a retired attorney who is a military spouse may apply for temporary licensing under Section 2-13A.

Sec. 3-9. Withdrawal of Appearance; Duration of Appearance

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon the filing of a new appearance that is stated to be in place of the appearance on file in accordance with Section 3-8. Appropriate entries shall be made in the court file. An attorney or party whose appearance is deemed to have been withdrawn may file an appearance for the limited purpose of filing an objection to the in place of appearance at any time.

(b) An attorney may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subsection shall state that such an appearance has been entered and that such party or parties are being represented by such other counsel at the time of the application. Such an application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

(c) In addition to the grounds set forth in subsections (a), (b), and (d), a lawyer who represents a party or parties on a limited basis in accordance with Section 3-8 (b) and has completed his or her representation as defined in the limited appearance, shall file a certifi-

cate of completion of limited appearance on Judicial Branch form JD-CL-122. The certificate shall constitute a full withdrawal of a limited appearance. Copies of the certificate must be served in accordance with Sections 10-12 through 10-17 on the client, and all attorneys and self-represented parties of record.

(d) All appearances of counsel shall be deemed to have been withdrawn 180 days after the entry of judgment in any action seeking a dissolution of marriage or civil union, annulment, or legal separation, provided no appeal shall have been taken. In the event of an appeal or the filing of a motion to open a judgment within such 180 days, all appearances of counsel shall be deemed to have been withdrawn after final judgment on such appeal or motion or within 180 days after the entry of the original judgment, whichever is later. Nothing herein shall preclude or prevent any attorney from filing a motion to withdraw with leave of the court during that period subsequent to the entry of judgment. In the absence of a specific withdrawal, counsel will continue of record for all postjudgment purposes until 180 days have elapsed from the entry of judgment or, in the event an appeal or a motion to open a judgment is filed within such 180 day period, until final judgment on that appeal or determination of that motion, whichever is later.

(e) Except as provided in subsections (a), (b), (c) and (d), no attorney shall withdraw his or her appearance in any civil, criminal, family, juvenile or other matter after it has been entered upon the record of the court without the leave of the court.

(f) All appearances in juvenile matters shall be deemed to continue during the period of delinquency probation supervision or probation

supervision with residential placement, family with service needs supervision, any commitment to the Commissioner of the Department of Children and Families pursuant to General Statutes § 46b-129 or protective supervision. An attorney appointed by the chief public defender to represent a parent in a pending neglect or uncared for proceeding shall continue to represent the parent for any subsequent petition to terminate parental rights if the attorney remains under contract to the Office of the Chief Public Defender to represent parties in child protection matters, the parent appears at the first hearing on the termination petition and qualifies for appointed counsel, unless the attorney files a motion to withdraw pursuant to Section 3-10 that is granted by the judicial authority or the parent requests a new attorney. The attorney shall represent the client in connection with appeals, subject to Section 35a-20 or 35a-20A, and with motions for review of permanency plans, revocations or postjudgment motions and shall have access to any documents filed in court. The attorney for the child shall continue to represent the child in all proceedings relating to the child, including termination of parental rights and during the period until final adoption following termination of parental rights.

COMMENTARY: The change to subsection (f) adds a reference to Section 35a-20A, which was adopted to take effect on January 1, 2022, so that an attorney's representation of a client in connection with appeals from certain juvenile matters is subject to Sections 35a-20 or 35a-20A, as applicable.

(NEW) Sec. 5-12. Objection to the Use of a Peremptory Challenge

(a) **Policy and Purpose.** The purpose of this rule is to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.

(b) **Objection.** A party may object to the use of a peremptory challenge to raise a claim of improper bias. The court may also raise this objection on its own. The objection shall be made by simple citation to this rule, and any further discussion shall be conducted outside the presence of the prospective juror.

(c) **Response.** Upon objection to the exercise of a peremptory challenge pursuant to this rule, the party exercising the peremptory challenge shall articulate the reason that the peremptory challenge has been exercised.

(d) **Determination.** The court shall then evaluate from the perspective of an objective observer, as defined in subsection (e) herein, the reason given to justify the peremptory challenge in light of the totality of the circumstances. If the court determines that the use of the challenge against the prospective juror, as reasonably viewed by an objective observer, legitimately raises the appearance that the prospective juror's race or ethnicity was a factor in the challenge, then the challenge shall be disallowed and the prospective juror shall be seated. If the court determines that the use of the challenge does not raise such an appearance, then the challenge shall be permitted and the prospective juror shall be excused. The court need not find purposeful discrimination to disallow the peremptory challenge. The court must explain its ruling on the record. A party whose peremptory challenge has been disallowed pursuant to this rule shall not be prohibited from attempting

to challenge peremptorily the prospective juror for any other reason or from conducting further voir dire of the prospective juror.

(e) **Nature of Observer**. For the purpose of this rule, an objective observer: (1) is aware that purposeful discrimination, and implicit, institutional, and unconscious biases, have historically resulted in the unfair exclusion of potential jurors on the basis of their race, or ethnicity; and (2) is deemed to be aware of and to have given due consideration to the circumstances set forth in subsection (f) herein.

(f) **Circumstances considered.** In making its determination, the circumstances the court should consider include, but are not limited to, the following:

(1) the number and types of questions posed to the prospective juror including consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the questions asked about it;

(2) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the prospective juror, unrelated to his testimony, than were asked of other prospective jurors;

(3) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

(4) whether a reason might be disproportionately associated with a race or ethnicity;

(5) if the party has used peremptory challenges disproportionately against a given race or ethnicity in the present case, or has been found by a court to have done so in a previous case;

(6) whether issues concerning race or ethnicity play a part in the facts of the case to be tried;

(7) whether the reason given by the party exercising the peremptory challenge was contrary to or unsupported by the record.

(g) **Reasons Presumptively Invalid.** Because historically the following reasons for peremptory challenges have been associated with improper discrimination in jury selection in Connecticut or may be influenced by implicit or explicit bias, the following are presumptively invalid reasons for a peremptory challenge:

(1) having prior contact with law enforcement officers;

(2) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;

(3) having a close relationship with people who have been stopped, arrested, or convicted of a crime;

(4) living in a high crime neighborhood;

(5) having a child outside of marriage; (6) receiving state benefits;

(7) not being a native English speaker; and

(8) having been a victim of a crime.

The presumptive invalidity of any such reason may be overcome as to the use of a peremptory challenge on a prospective juror if the party exercising the challenge demonstrates to the court's satisfaction that the reason, viewed reasonably and objectively, is unrelated to the prospective juror's race or ethnicity and, while not seen by the court as sufficient to warrant excusal for cause, legitimately bears on

the prospective juror's ability to be fair and impartial in light of particular facts and circumstances at issue in the case.

(h) **Reliance on Conduct.** The following reasons for peremptory challenges also have historically been associated with improper discrimination in jury selection: allegations that the prospective juror was inattentive, failing to make eye contact or exhibited a problematic attitude, body language, or demeanor. If any party intends to offer one of these reasons or a similar reason as a justification for a peremptory challenge, that party must provide reasonable notice to the court and the other parties so the behavior can be verified and addressed in a timely manner. A party who intends to exercise a peremptory challenge for reasons relating to those listed above in subsection (g) shall, as soon as practicable, notify the court and the other party in order to determine whether such conduct was observed by the court or that party. If the alleged conduct is not corroborated by observations of the court or the objecting party, then a presumption of invalidity shall apply but may be overcome as set forth in subsection (g).

(i) **Review Process**. The chief justice shall appoint an individual or individuals to monitor issues relating to this rule.

COMMENTARY: This new rule is intended to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.

AMENDMENTS TO THE CIVIL RULES

Sec. 13-8. —Objections to Interrogatories

(a) The party objecting to any interrogatory shall: (1) set forth each interrogatory; (2) specifically state the reasons for the objection; and

(3) state whether any responsive information is being withheld on the basis of the stated objection. Objections shall be governed by the provisions of Sections 13-2 through 13-5, signed by the attorney or self-represented party making them, and filed with the court pursuant to Section 13-7. No objection may be filed with respect to interrogatories which have been set forth in Forms 201, 202, 203, 208, 210, 212, 213 **[**and/or**]**, 214, 218, 220 and/or 221 of the rules of practice for use in connection with Section 13-6.

(b) To the extent a party withholds responsive information based on an assertion of a claim of privilege or work product protection, the party must file an objection in compliance with the provisions of subsection (a) of this section and comply with the provisions set forth in subsection (d) of Section 13-3.

(c) No objections to interrogatories shall be placed on the short calendar list until an affidavit by either counsel is filed certifying that bona fide attempts have been made to resolve the differences concerning the subject matter of the objection and that counsel have been unable to reach an agreement. The affidavit shall set forth the date of the objection, the name of the party who filed the objection and the name of the party to whom the objection was addressed. The affidavit shall also recite the date, time and place of any conference held to resolve the differences and the names of all persons participating therein or, if no conference has been held, the reasons for the failure to hold such a conference. If any objection to an interrogatory is overruled, the objecting party shall answer the interrogatory, and serve

the answer within twenty days after the judicial authority ruling unless otherwise ordered by the judicial authority.

(d) An interrogatory otherwise proper is not objectionable merely because it involves more than one fact or relates to the application of law to facts.

COMMENTARY: The changes in subsection (a) add the standard interrogatory forms for medical malpractice, Forms 218, 220 and 221, to the list of standard interrogatories to which objections may not be filed.

Sec. 13-10. —Responses to Requests for Production; Objections

(a) The party to whom the request is directed or such party's attorney shall serve a written response, which may be in electronic format, within sixty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the request or, if applicable, the notice of requests for production on the responding party or within such shorter or longer time as the judicial authority may allow, unless: (1) Counsel and/or self-represented parties file with the court a written stipulation extending the time within which responses may be served; or

(2) Upon motion, the court allows a longer time; or

(3) Objections to the requests for production and the reasons therefor are filed and served within the sixty day period.

(b) All responses: (1) shall repeat immediately before the response the request for production being responded to; and (2) shall state with respect to each item or category that inspection and related activities

will be permitted as requested, unless the request or any part thereof is objected to.

(c) Where a request calling for submission of copies of documents is not objected to, the party responding to the request shall produce those copies with the response served upon all parties.

(d) Objection by a party to certain parts of a request shall not relieve that party of the obligation to respond to those portions to which that party has not objected within the sixty day period.

(e) A party objecting to one or more of the requests for production shall file an objection in accordance with subsection (f) of this section.

(f) A party who objects to any request or portion of a request shall: (1) set forth the request objected to; (2) specifically state the reasons for the objection; and (3) state whether any responsive materials are being withheld on the basis of the stated objection. Objections shall be governed by the provisions of Sections 13-2 through 13-5, signed by the attorney or self-represented party making them and filed with the court.

(g) To the extent a party withholds any responsive material based on an assertion of a claim of privilege or work product protection, the party must file an objection in compliance with the provisions of subsection (f) of this section and comply with the provisions set forth in subsection (d) of Section 13-3.

(h) No objection may be filed with respect to requests for production set forth in Forms 204, 205, 206, 209, 211, 215, **[**and/or**]** 216, 219, 222 and/or 223 of the rules of practice for use in connection with Section 13-9.

(i) No objection to any request for production shall be placed on the short calendar list until an affidavit by counsel or self-represented parties is filed certifying that they have made good faith attempts to resolve the objection and that counsel and/or self-represented parties have been unable to reach an agreement. The affidavit shall set forth: (1) the date of the objection; (2) the name of the party who filed the objection and to whom the objection was addressed; (3) the date, time and place of any conference held to resolve the differences; and (4) the names of all conference participants. If no conference has been held, the affidavit shall also set forth the reasons for the failure to hold such a conference.

(j) If an objection to any part of a request for production is overruled, the objecting party shall comply with the request at a time set by the judicial authority.

(k) The party serving the request or the notice of request for production may move for an order under Section 13-14 with respect to any failure to respond by the party to whom the request or notice is addressed.

COMMENTARY: The changes in subsection (h) add the standard requests for production forms for medical malpractice, Forms 219, 222 and 223, to the list of standard requests for production to which objections may not be filed.

Sec. 16-5. Peremptory Challenges

(a) Each party may challenge peremptorily the number of jurors which each is entitled to challenge by law. Where the judicial authority determines a unity of interests exists, several plaintiffs or several

defendants may be considered as a single party for the purpose of making challenges, or the judicial authority may allow additional peremptory challenges and permit them to be exercised separately or jointly. For the purposes of this section, a ''unity of interest'' means that the interests of the several plaintiffs or the several defendants are substantially similar. A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm. In addition, there shall be a presumption that a unity of interest exists among parties where no cross claims or apportionment complaints have been filed against one another. In all civil actions, the total number of peremptory challenges allowed to the plaintiff or plaintiffs shall not exceed twice the number of peremptory challenges allowed to the defendant or defendants, and the total number of peremptory challenges allowed to the defendant or defendants shall not exceed twice the number of peremptory challenges allowed to the plaintiff or plaintiffs.

(b) Pursuant to the provisions of Section 5-12, a party or the court on its own may object to the use of a peremptory challenge to raise a claim of improper bias.

COMMENTARY: The change to this section includes a reference to the procedure to object to peremptory challenges under new Section 5-12, to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.

Sec. 23-1. Arbitration; Confirming, Correcting or Vacating Award

In proceedings brought for confirming, vacating or correcting an arbitration award under **[**General Statutes §§ 52-417, 52-418 or 52-

419**]** chapters 862 and 909 of the General Statutes, the court or judge to whom the application is made shall cause to be issued a citation directing the adverse party or parties in the arbitration proceeding to appear on a day certain and show cause, if any there be, why the application should not be granted.

COMMENTARY: The changes to this section are intended to ensure that consistent standard procedures will be used in proceedings brought for confirming, vacating or correcting an arbitration award.

AMENDMENTS TO THE JUVENILE RULES

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

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

(a) The definitions of the terms ''child,'' ''abused,'' ''delinquent,'' ''delinquent act,'' ''neglected,'' ''uncared for,'' ''alcohol-dependent,'' ''drug-dependent,'' ''serious juvenile offense,'' ''serious juvenile offender,'' ''serious juvenile repeat offender,'' ''predispositional study,'' and ''risk and needs assessment'' shall be as set forth in General Statutes § 46b-120. The definition of ''victim'' shall be as set forth in General Statutes § 46b-122.

(b) ''Commitment'' means an order of the judicial authority whereby custody and/or guardianship of a child 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 conduct as a delinquent brings the child within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

[(d) ''Detention'' means a secure building or staff secure facility for the temporary care of a child who is the subject of a delinquency complaint.**]**

[(e)**]** (d) ''Guardian'' means a person who has a judicially created relationship with a child, 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: protection, education, care and control of the person, custody of the person and decision making.

[(f)**]** (e) ''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, orders whatever action is in the best interests of the child 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 is uncared for, abused, or neglected. 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 (A) 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 (B) a child 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; (6) ''Probation status review hearing'' means a hearing requested, ex parte, by a probation officer regardless of whether a new offense or violation has been filed. The court may grant the ex parte request, in the best interest of the child or the public, and convene a hearing on the request within seven days.

[(g)**]** (f) ''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.

[(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 born out of wedlock, provided at the time of the filing of the petition (1) he has been adjudicated the father of such child 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 (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 by the mother.**]**

(g) ''Juvenile residential center'' means a hardware-secured residential facility operated by the court support services division of the Judicial Branch that includes direct staff supervision, surveillance enhancements and physical barriers that allow for close supervision and controlled movement in a treatment setting for preadjudicated juveniles and juveniles adjudicated as delinquent.

[(i)**]** (h) ''Parties'' includes: (1) The child who is the subject of a proceeding and those additional persons as defined herein; (2) ''Legal party'': Any person, including a parent, whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority's jurisdiction to adjudicate the matter pending before it; and (3) ''Intervening party'':

Any person who is permitted to intervene in accordance with Section 35a-4.

[(j)**]** (i) ''Permanency plan'' means a plan developed by the Commissioner of the Department of Children and Families for the permanent placement of a child 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), and 46b-149 (h).

[(k)**]** (j) ''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*)**]** (k) ''Information'' means a formal pleading filed by a prosecutor alleging that a child in a delinquency matter is within the judicial authority's jurisdiction.

[(m)**]** (*l*) ''Probation supervision'' means a legal status whereby a juvenile who has been adjudicated delinquent is placed by the court under the supervision of juvenile probation for a specified period of time and upon such terms as the court determines.

[(n)**]** (m) ''Probation supervision with residential placement'' means a legal status whereby a juvenile who has been adjudicated delinquent is placed by the court under the supervision of juvenile probation for a specified period of time, upon such terms as the court determines, that include a period of placement in a secure or staff-secure residential

treatment facility, as ordered by the court, and a period of supervision in the community.

[(o)**]** (n) ''Respondent'' means a person who is alleged to be a delinquent, or a parent or a guardian of a child who is the subject of a petition alleging that the child is uncared for, abused, neglected, or requesting termination of parental rights.

[(p)**]** (o) ''Secure-residential facility'' means a hardware-secured residential facility that includes direct staff supervision, surveillance enhancements and physical barriers that allow for close supervision and controlled movement in a treatment setting.

[(q)**]** (p) ''Specific steps'' means those judicially determined steps the parent or guardian and the Commissioner of the Department of Children and Families should take in order for the parent or guardian to retain or regain custody of a child.

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

[(s)**]** (r) ''Staff-secure residential facility'' means a residential facility that provides residential treatment for children in a structured setting where the children are monitored by staff.

[(t)**]** (s) ''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 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 when the child'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 subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or § 46b-133e.

[(u)**]** (t) ''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**]** Juvenile Residential Center **[**s**]**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.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.'' The deletion of the definition of ''parent'' is because there are numerous definitions of that term in No. 21-15 of the 2021 Public Acts.

Sec. 27-1A. Referrals for Nonjudicial Handling of Delinquency Complaints

(a) Any police summons accompanied by a police report alleging an act of delinquency shall be in writing and signed by the police officer and filed with the clerk of the Superior Court for juvenile matters. After juvenile identification and docket numbers are assigned, the summons and report shall be referred to the probation department for possible nonjudicial handling.

(b) If the probation **[**officer**]** supervisor or designee determines that a delinquency complaint is eligible for nonjudicial handling, the assigned probation officer **[**may cause a notice to be mailed to the child and parent or guardian setting forth with reasonable particularity the contents of the complaint and fixing a time and location of the court and date not less than seven days, excluding Saturdays, Sundays, and holidays, subsequent to mailing**]** shall contact the parent or guardian in advance of the summons date in order to schedule an interview with the parent or guardian and child for the purpose of conducting risk and behavioral health screenings. A child determined by the risk screen to be at low risk to reoffend will be referred to community based diversionary programs with no further court intervention. Judicial handling will be reserved for those found to be at the highest levels of risk. All other cases will be eligible for nonjudicial handling. Refusal to participate in the screening process will render the child ineligible for diversion.

(c) Delinquency matters eligible for nonjudicial handling shall be designated as such on the docket. If the prosecuting authority objects

to the designation, the judicial authority shall determine if such designation is appropriate. The judicial authority may refer to the Office of Juvenile Probation a matter so designated and may, sua sponte, refer a matter for nonjudicial handling prior to adjudication.

COMMENTARY: The changes to this section and to Section 27-4A implement the recommendation of the IOYouth Task Force to more strategically direct juvenile delinquency cases from the formal court process.

Sec. 27-4A. Ineligibility for Nonjudicial Handling or Diversion of Delinquency Complaint

In the case of a delinquency complaint, a child shall not be eligible for nonjudicial handling or diversion if one or more of the following apply, unless waived by the judicial authority:

(1) The alleged misconduct is:

(A) **[**is**]** a serious juvenile offense under General Statutes § 46b-120**[**, or any other felony or violation of General Statutes § 53a-54d**]**;

(B) **[**concerns the theft or unlawful use or operation of a motor vehicle**]** a violent felony; or

(C) **[**concerns the sale of, or possession of with intent to sell, any illegal drugs or the use or possession of a firearm.**]** a violation of General Statutes § 53a-54d; or

[(2) The child was previously adjudicated delinquent or adjudged a child from a family with service needs alleged misconduct was committed by a child while on probation or under judicial supervision.

(3) The child admitted nonjudicially at least twice previously to having been delinquent.**]**

[(4)**]** (2) The alleged misconduct was committed by a child while on probation or under judicial supervision.

[(5) If the nature of the alleged misconduct warrants judicial intervention.**]**

COMMENTARY: The changes to this section and to Section 27-1A implement the recommendation of the IOYouth Task Force to more strategically direct juvenile delinquency cases from the formal court process.

Sec. 30-1A. Admission to [Detention] a Juvenile Residential Center

Whenever an officer or other person intends to admit a child into **[**detention**]** a juvenile residential center, the provisions of General Statutes § 46b-133 shall apply.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-2A. Nondelinquent Juvenile Runaway from Another State and Detention

No nondelinquent juvenile runaway from another state may be held in a juvenile **[**detention**]** residential center in accordance with the provisions of General Statutes § 46b-151h.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-3. Advisement of Rights

Upon admission to **[**detention**]** a juvenile residential center, the child shall be advised of the right to remain silent and the right to counsel and be further advised of the right to a detention hearing in accordance with Sections 30-5 through 30-8, which hearing may be waived only with the written consent of the child and the child's attorney.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-4. Notice to Parents by [Detention] Juvenile Residential Center Personnel

Upon admission, the **[**detention**]** Juvenile Residential Center **[**s**]**Superintendent or a designated representative shall make efforts to immediately notify the parent or guardian in the manner calculated most speedily to effect such notice and, upon the parent's or guardian's appearance at the **[**detention facility**]** juvenile residential center, shall advise the parent or guardian of his or her rights and note the child's rights, including the child's right to a detention hearing.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-5. Detention Time Limitations

(a) No child shall be held in **[**detention**]** a juvenile residential center for more than twenty-four hours, excluding Saturdays, Sundays, and holidays, unless (1) a delinquency petition or information alleging a

delinquent act has been filed and (2) an order for such continued detention has been signed by the judicial authority following a hearing as provided by subsection (b) of this section or a waiver of hearing as provided by Section 30-8.

(b) A hearing to determine probable cause and the need for further detention shall be held no later than the next business day following the arrest.

(c) If a nondelinquent child is being held for another jurisdiction in accordance with the Interstate Compact on Juveniles, following the initial hearing as provided by subsection (b) of this section, that child shall be held not more than ninety days and shall be held in a secure facility, as defined by rules promulgated in accordance with the Compact, other than a locked, **[**state operated detention facility**]** juvenile residential center.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-6. Basis for Detention

No child may be held in **[**detention**]** a juvenile residential center unless a judge of the Superior Court determines, based on the available facts that there is probable cause to believe that the child has committed the delinquent acts alleged, that there is no appropriate less restrictive alternative available and that there is (1) probable cause to believe that the level of risk that the child poses to public safety if released to the community prior to the court hearing or disposition cannot be managed in a less restrictive setting, (2) a need to hold the child in

order to ensure the child's appearance before the court or compliance with court process, as demonstrated by the child's previous failure to respond to the court process, or (3) a need to hold the child for another jurisdiction. The court in exercising its discretion to detain under General Statutes § 46b-133 (e) may consider as an alternative to detention a suspended detention order with graduated sanctions based upon a detention risk screening for such child developed by the Judicial Branch.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-8. Initial Order for Detention; Waiver of Hearing

Such initial order of detention may be signed without a hearing only if there is a written waiver of the detention hearing by the child and the child's attorney and there is a finding by the judicial authority that the circumstances outlined in Section 30-6 pertain to the child in question. An order of detention entered without a hearing shall authorize the detention of the child for a period not to exceed seven days, including the date of admission, or until the dispositional hearing is held, whichever is shorter, and may further authorize the **[**detention**]** Juvenile Residential Center **[**s**]**Superintendent or a designated representative to release the child to the custody of a parent, guardian or some other suitable person, with or without conditions of release, if detention is no longer necessary, except that no child shall be released from **[**detention**]** a juvenile residential center who is alleged to have committed a serious juvenile offense except by order of a judicial

authority of the Superior Court. Such an ex parte order of detention shall be renewable only at a detention hearing before the judicial authority for a period that does not exceed seven days or until the dispositional hearing is held, whichever is shorter.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-10. Orders of a Judicial Authority after Initial Detention Hearing

(a) At the conclusion of the initial detention hearing, the judicial authority shall issue an order for detention on finding probable cause to believe that the child has committed a delinquent act and that at least one of the factors outlined in Section 30-6 applies to the child.

(b) If the child is placed in **[**detention**]** a juvenile residential center, such order for detention shall be for a period not to exceed seven days, including the date of admission, or until the dispositional hearing is held, whichever is the shorter period, unless, following a further detention review hearing, the order is renewed for a period that does not exceed seven days or until the dispositional hearing is held, whichever is shorter. Such detention review hearing may not be waived.

(c) If the child is not placed in **[**detention**]** a juvenile residential center but released on a suspended order of detention on conditions, such suspended order of detention shall continue to the dispositional hearing or until further order of the judicial authority. Said suspended order of detention may be reviewed by the judicial authority every seven days. Upon a finding of probable cause that the child has violated any

condition, a judicial authority may issue a take into custody order or order such child to appear in court for a hearing on revocation of the suspended order of detention. Such an order to appear shall be served upon the child in accordance with General Statutes § 46b-128 (b), or, if the child is represented, by serving the order to appear upon the child's counsel, who shall notify the child of the order and the hearing date. After a hearing and upon a finding that the child has violated reasonable conditions imposed on release, the judicial authority may impose different or additional conditions of release or may remand the child to **[**detention**]** a juvenile residential center.

(d) In conjunction with any order of release from **[**detention**]** a juvenile residential center the judicial authority may, in accordance with General Statutes § 46b-133 (g), order the child to participate in a program of periodic alcohol or drug testing and treatment as a condition of such release. The results of any such alcohol or drug test shall be admissible only for the purposes of enforcing the conditions of release from **[**detention**]** a juvenile residential center.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

Sec. 30-11. Detention after Dispositional Hearing

While awaiting implementation of the judicial authority's order in a delinquency case, a child may be held in **[**detention**]** a juvenile residential center subsequent to the dispositional hearing, provided a hearing to review the circumstances and conditions of such detention order

shall be conducted every seven days and such hearing may not be waived.

COMMENTARY: The changes to this section are consistent with No. 21-104 of the 2021 Public Acts, specifically the change from ''detention'' to ''juvenile residential center.''

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 matters, and of the parents in termination matters.

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

COMMENTARY: The changes to this section remove the requirements that a plea of nolo contendere be in writing and signed by the respondent.

AMENDMENTS TO THE CRIMINAL RULES

Sec. 42-13. —Peremptory Challenges

(a) The prosecuting authority and the defendant may challenge peremptorily the number of jurors which each is entitled to challenge by law.

(b) Pursuant to the provisions of Section 5-12, a party or the court on its own may object to the use of a peremptory challenge to raise a claim of improper bias.

COMMENTARY: The change to this section includes a reference to the procedure to object to peremptory challenges under new Section 5-12, to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.

Sec. 43-39. Speedy Trial; Time Limitations

(a) Except as otherwise provided herein and in Section 43-40 or 43-40A, the trial of a defendant charged with a criminal offense during the period from July 1, 1983, through June 30, 1985, inclusive, shall commence within eighteen months from the filing of the information or from the date of the arrest, whichever is later.

(b) The trial of such defendant shall commence within twelve months from the filing of the information or from the date of the arrest, whichever is later, if the following conditions are met:

(1) the defendant has been continuously incarcerated in a correctional institution of this state pending trial for such offense; and

(2) the defendant is not subject to the provisions of General Statutes § 54-82c.

(c) Except as otherwise provided herein and in Section 43-40 or 43-40A, the trial of a defendant charged with a criminal offense on or after July 1, 1985, shall commence within twelve months from the filing of the information or from the date of the arrest, whichever is later.

(d) The trial of such defendant shall commence within eight months from the filing of the information or from the date of the arrest, whichever is later, if the following conditions are met:

(1) the defendant has been continuously incarcerated in a correctional institution of this state pending trial for such offense; and

(2) the defendant is not subject to the provisions of General Statutes § 54-82c.

(e) If an information which was dismissed by the trial court is reinstated following an appeal, the time for trial set forth in subsections (a), (b) and (c) shall commence running from the date of release of the final appellate decision thereon.

(f) If the defendant is to be tried following a mistrial, an order for a new trial, an appeal or collateral attack, the time for trial set forth in subsections (a), (b) and (c) shall commence running from the date the order occasioning the retrial becomes final.

COMMENTARY: The changes to this section are consistent with the adoption of Section 43-40A regarding the included time in the speedy trial calculation.

Sec. 43-41. —Motion for Speedy Trial; Dismissal

If the defendant is not brought to trial within the applicable time limit set forth in Sections 43-39 **[**and**]** through 43-40A, and, absent good cause shown, a trial is not commenced within thirty days of the filing of a motion for speedy trial by the defendant at any time after such time limit has passed, the information shall be dismissed with prejudice, on motion of the defendant filed after the expiration of such thirty day period. For the purpose of this section, good cause consists of any one of the reasons for delay set forth in Section 43-40 or 43-40A. When good cause for delay exists, the trial shall commence as soon as is reasonably possible. Failure of the defendant to file a motion to dismiss prior to the commencement of trial shall constitute a waiver of the right to dismissal under these rules.

COMMENTARY: The changes to this section are consistent with the adoption of Section 43-40A regarding the included time in the speedy trial calculation.

AMENDMENTS TO THE PRACTICE BOOK FORMS

Form 203

Plaintiff's Interrogatories

Premises Liability Cases

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

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within sixty (60) days of the filing hereof in compliance with Practice Book Section 13-2.

In answering these interrogatories, the Defendant(s) is (are) required to provide all information within their knowledge, possession or power. If an interrogatory has subparts, answer each subpart separately and in full and do not limit the answer to the interrogatory as a whole. If any interrogatories cannot be answered in full, answer to the extent possible.

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

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

(i) your name and any other name by which you have been known;

(ii) your date of birth;

(iii) your home address;

(iv) your business address.

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

(i) your name and any other name by which you have been known;

(ii) your business address;

(iii) the nature of your business entity (corporation, partnership, etc.);

(iv) whether you are registered to do business in Connecticut;

(v) the name of the manager of the property, if applicable.

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

(3) Identify the person(s) responsible for the maintenance and inspection of the premises at the time and place where the Plaintiff claims to have been injured. ''Maintenance and inspection'' includes, but is not limited to, snow and ice removal.

(4) State whether you received or prepared any invoices or records related to such maintenance and inspection for the thirty days prior to, or on, the date on which the Plaintiff claims to have been injured.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) whether the complaint was in writing; (d) the nature of the complaint.

[(11)**]** (12) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other digital or electronic

means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

[(12)**]** (13) Are you aware of any photographs or any recordings by film, video, audio or any other digital or electronic means depicting the incident alleged in the Complaint, the scene of the incident, or any condition or injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs or each recording taken, obtained or prepared of each such subject, please state:

(a) the name and address of the person who took, obtained or prepared such photographs or recording, other than an expert who will not testify at trial;

(b) the dates on which such photographs were taken or such recordings were obtained or prepared;

(c) the subject (e.g., ''scene of incident,'' etc.); (d) the number of photographs or recordings;

(e) the nature of the recording (e.g., film, video, audio, etc.). **[**(13)-(23)**]** (14)-(24) (Interrogatories #1 (a) through (e), #2 through #5, #7, #8, #9, #12, #13 and #16 of Form 201 may be used to complete this standard set of interrogatories.)

PLAINTIFF,

BY_____

CERTIFICATION

I hereby certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to*

*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

_____

Signed (Signature of filer) Print or type name of person signing

_____

Date Signed

_____

Mailing address (Number, street, town, state and zip code) or

_____

E-mail address, if applicable

_____

Telephone number

COMMENTARY: The changes to this form include an inquiry into whether there was an agreement for snow and ice removal and the existence of a contract for such.

Form 206

Plaintiff's Requests for Production—Premises Liability

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

The Plaintiff hereby requests that the Defendant provide counsel for the Plaintiff with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on _____ (day), _____ (date) at _____ (time).

In answering these production requests, the Defendant(s) are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

(1) A copy of the policies, **[**or**]** procedures, contracts, invoices, or records identified in response to Interrogatories #4 and #5.

(2) A copy of the report identified in response to Interrogatory **[**#6**]** #7.

(3) A copy of any written complaints identified in Interrogatory **[**#10**]** #11.

(4) A copy of declaration page(s) evidencing the insurance policy or policies identified in response to Interrogatories numbered _____ and _____.

(5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter,

(6) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.

(7) A copy of any photographs or recordings, identified in response to Interrogatory **[**#12**]** #13.

(8) A copy of any written lease(s) and any amendments or extensions to such lease(s) for the premises where the Plaintiff claims to have been injured in effect at the time of the Plaintiff's injury between you and the person or entity identified in Interrogatory #2.

(9) A copy of any written contract or agreement regarding the maintenance and inspection of the premises where the Plaintiff claims to have been injured in effect at the time of the Plaintiff's injury between you and the person or entity identified in Interrogatory #3.

PLAINTIFF,

BY _____

CERTIFICATION

I hereby certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on

(date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to*

*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

_____

Signed (Signature of filer) Print or type name of person signing

_____

Date Signed

_____

Mailing address (Number, street, town, state and zip code) or

_____

E-mail address, if applicable

_____

Telephone number

COMMENTARY: The changes to this form include an inquiry into whether there was an agreement for snow and ice removal and the existence of a contract for such.

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

STATE *v.* ULISES ROBLES, SC 20452
Judicial District of Hartford

Criminal; Whether Confrontation Rights Violated by Testimony of Chief Medical Examiner Concerning Autopsy He Did Not Perform; Whether There Was Sufficient Evidence to Support Possession of Weapon in Vehicle Conviction. The defendant was convicted of manslaughter in the first degree with a firearm, criminal possession of a firearm and possession of a weapon in a vehicle for fatally shooting a woman as she sat in her car on a street in Hartford. The defendant appeals directly from his conviction to the Supreme Court under General Statutes § 51-199 (b) (3). On appeal, the defendant claims that the trial court violated his confrontation rights by allowing Chief Medical Examiner James Gill to testify as to an autopsy that he did not perform. Gill testified that the autopsy was performed by an associate medical examiner who no longer worked at his office but that he had the opportunity to review her report. Gill further testified that the autopsy determined that the victim died of a gunshot wound to the chest and that the condition of the skin around the entry wound suggested that the gun was shot at close range. The defendant also claims on appeal that there was insufficient evidence to support his conviction of possession of a weapon in a vehicle. Specifically, he argues that the state presented no evidence to establish the element of the crime that he lacked a permit for the gun that he possessed at the time of the crime. The trial court found that the element was satisfied because the defendant stipulated that he had felony convictions dating back to 2006, and, as a result, he would have been ineligible to obtain a pistol permit under the governing statutes and any permit that he may have had prior to his first felony conviction would have expired. The defendant argues that, in the absence of a request by the state, the trial court could not properly take judicial notice of those statutes and infer from them that he lacked a pistol permit on the date of the charged crimes because of his status as a convicted felon.

STATE OF CONNECTICUT *v.* DWAYNE SAYLES, SC 20575
Judicial District of New Haven

Criminal; Search and Seizure; Whether Data Stored on Cell Phone Constitutes Physical Evidence that Need Not Be Sup-

pressed if Seized as Result of *Miranda* Violation; Whether State Constitution Requires Suppression of Physical Evidence Seized as Result of Violation of State Constitutional Rights. During a robbery of a convenience store, the defendant shot and killed Sanjay Patel, a store employee. After the police conducted a search of the defendant's residence pursuant to a warrant, the defendant came to the police station, accompanied by his mother, and was interviewed by detectives. Before questioning began, the defendant was informed of his *Miranda* rights, at which point he invoked his rights to remain silent and to counsel. Before terminating the interview, Detective Christopher Perrone asked the defendant where his cell phone was located. The defendant responded that he had given it to his mother, who was waiting outside the interview room. Perrone obtained the cell phone from the defendant's mother and later secured a warrant for the data contained therein. The defendant was subsequently arrested and charged with felony murder, conspiracy to commit robbery, and two firearm offenses. Before trial, the defendant filed two motions to suppress the contents of his cell phone and any cellular data because of violations of both the federal and state constitutions. The trial court denied the motions to suppress, and the defendant was subsequently convicted on all counts. On appeal to the Appellate Court (202 Conn. App. 736), the defendant claimed, inter alia, that the evidence found in his cell phone had been obtained after the detectives violated his *Miranda* rights and his rights pursuant to article first, § 8, of the Connecticut constitution, and, therefore, should have been suppressed. He argued that the detectives violated his rights to remain silent and to have counsel present by continuing to question him regarding the location of his cell phone after he had invoked those rights and that, therefore, the contents of his phone constituted "fruit of the poisonous tree." As to the defendant's claim under the United States constitution, the Appellate Court concluded that, even if a *Miranda* violation had occurred, the cell phone and its contents were not subject to suppression under the fruit of the poisonous tree doctrine because, under *United States* v. *Patane*, 546 U.S. 630 (2004), and *State* v. *Mangual*, 311 Conn. 182 (2014), a violation of *Miranda* does not require the suppression of physical evidence resulting from that violation. The Appellate Court also rejected the defendant's claim that the state constitution affords greater protections than the federal constitution, noting that the defendant had failed to present a comprehensive analysis of this claim in his appellate brief. The Supreme Court granted the defendant's petition for certification to appeal and will decide whether the Appellate Court properly (1) upheld the trial court's denial of the

defendant's motion to suppress the contents of his cell phone in reliance on *Patane* and *Mangual*, when the seizure of those contents was the result of questioning after he had invoked his *Miranda* rights, on the basis that a cell phone and its stored data constitute "physical" (i.e., nontestimonial) evidence that need not be suppressed if seized as the result of a *Miranda* violation; and (2) rejected the defendant's claim that the holding in *Patane* does not comport with the broader protections against compelled self-incrimination afforded under the state constitution.

NATIONWIDE MUTUAL INS. CO. et al. *v.* JEFFREY PASIAK et al.,
SC 20617
Judicial District of Stamford-Norwalk

Insurance; Whether "Business Pursuits" Exclusion Barred Claim; Whether Trial Court Applied Proper Standard of Review; Whether Trial Court Properly Considered Public Policy Concerns in Deciding Whether Exclusion Applied. Sara Socci worked as a part-time office manager for Pasiak Construction Services, LLC, which was owned and operated by Jeffrey Pasiak. Socci had begun working alone in the company's office in Pasiak's home around 9:30 a.m. when a masked intruder tied, gagged and blindfolded her, pointed a gun at her head, and threatened to kill her family if she did not open Pasiak's safe. Pasiak arrived during the incident, and the intruder was revealed to be his friend, Richard Kotulsky. Initially, Pasiak refused to allow Socci to leave or to call the police due to both business and personal concerns. Pasiak took Socci to consult with Denise Taranto, a friend and business advisor, about how to handle the situation. Pasiak eventually allowed Socci to leave around 2:30 p.m., after being advised by Taranto that they should contact the police. Socci subsequently prevailed in an action against Pasiak in which she alleged false imprisonment. The plaintiff insurance companies (Nationwide) brought this action seeking a declaratory judgment that they had no duty to indemnify Pasiak under a personal umbrella policy above his homeowners' insurance policy for the damages awarded to Socci by operation of a "business pursuits" exclusion in the policy. The exclusion provides that "[e]xcess liability and additional coverages do not apply to . . . [a]n occurrence arising out of the business pursuits . . . of an insured." The trial court concluded that the exclusion did not apply, but the Appellate Court (161 Conn. App. 86) disagreed and reversed. The Supreme Court (327 Conn. 225) reversed the Appellate Court's decision, concluding that both lower courts misapplied the exclusion.

The Supreme Court explained that, for purposes of the exclusion, an occurrence arises out of a business pursuit where the occurrence is connected with, grows out of, flows from, or is incident to the business pursuit. The Supreme Court also determined that further factual findings would be necessary to determine whether the exclusion applies here and, accordingly, remanded the matter to the trial court for a trial de novo on that issue. On remand, the trial court found that Nationwide satisfied its burden of proving by a preponderance of the evidence that Socci's false imprisonment arose out of Pasiak's business pursuits such that the exclusion applied to bar his claim. Pasiak appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. On appeal, Pasiak claims that the trial court applied the wrong legal standard by failing to determine whether the policy clearly and unambiguously excludes Pasiak's claim. Pasiak further claims that the trial court improperly found that Nationwide satisfied its burden of proving that the exclusion applied where he argues that Nationwide failed to produce any new evidence as required by the remand order. Pasiak also claims that the trial court improperly relied on public policy grounds as further support for its conclusion that the exclusion applied to bar his claim. Pasiak additionally claims that the trial court improperly failed to consider statements given by Socci and Pasiak to the police on the day of the subject incident and that the trial court's conclusion that Kotulsky's actions constituted an attack on Pasiak's business is not supported by any evidence in the record.

STATE OF CONNECTICUT *v.* CONN. STATE UNIVERSITY ORGANIZATION OF ADMINISTRATIVE FACULTY, AFSCME, CO.4, LOCAL 2836, AFL-CIO, SC 20628

Judicial District of Hartford

Arbitration; Whether Trial Court Erred in Finding Arbitration Award Violated Public Policy; Whether Trial Court Improperly Substituted Its Findings of Facts for That of Arbitrator. This matter arises from the termination of Christopher Dukes (Dukes), Director of Student Conduct for Central Connecticut State University (CCSU), following a domestic disturbance incident. On the evening of April 24, 2018, the police responded to a 911 call from Dukes' wife claiming that he had threatened to kill her and himself. She further explained that she was concerned for the safety of her children who were still in the house with Dukes. A standoff ensued between Dukes and the police for several hours. During the standoff, Dukes disclosed that he had a gun and told the police not to breach his house. Dukes

eventually surrendered and was taken into custody. The plaintiff, State of Connecticut (State) and the defendant, Connecticut State University Organization of Administrative Faculty, AFSCME, Council 4, Local 2836, AFL-CIO (Union), are parties to a collective bargaining agreement (CBA) that provides for arbitration of grievances. Following this incident, CCSU sent Dukes a termination letter that stated, in pertinent part, "[y]our dismissal is for off-duty behavior on the night and early morning of April 24-25, 2018, which . . . created a hazardous situation, placing your spouse, children, police personnel, and yourself at risk for grave harm. The seriousness of the misconduct renders you unsuitable to discharge your professional responsibilities . . . and forms the just cause basis for your termination." The Union filed a grievance challenging Dukes' termination, claiming that the charges presented by CCSU lacked sufficient specificity and that CCSU had failed to prove just cause for the termination. The arbitrator found in favor of Dukes on the claim that CCSU had failed to prove just cause for the termination. As a result, the State was direct to restore Dukes to his former position, purge the discipline record from his personnel file and make him whole for the loss of pay and benefits that resulted from his termination. The State thereafter filed an application to vacate the arbitration award on the basis that the award violates public policy. The Union filed an application to confirm the award, asserting that the award was within the rights and powers agreed to by the parties in the CBA. The trial court found that the arbitration award violated well-defined and dominant public policies concerning the protection of children, preserving the peace, preventing interference with police personnel in the performance of their duties and endangering police officers and vacated the award. The Union filed this appeal in the Appellate Court, and the Supreme Court thereafter transferred the appeal to itself. On appeal, the Union claims that the trial court's decision extends the public policy exception to the rule of deference to an arbitrator's decision so far that it eliminates the very purpose of the rule. The Union further claims that the trial court substituted its own factual findings for those of the arbitrator. The Union also claims that there was no clear public policy implicated in this matter. Lastly, the Union claims that, even if there were dominant public policies implicated in this matter, the award does not violate any of those policies.

JOHN DRUMM, CHIEF OF POLICE, et al.*v.* FREEDOM OF INFORMATION COMMISSION et al., SC 20656

Judicial District of New Britain

Freedom of Information Act; Whether Trial Court Erred in Adopting "Reasonable Probability" Standard in Determining

That Requested Police Records Were Not Exempt From Disclosure Under General Statutes § 1-210 (b) (3) (D); Whether Trial Court Erred in Concluding That Substantial Evidence in Record Supported FOIC's Findings. Barbara Beach Hamburg ("Hamburg") was murdered outside her home in Madison, Connecticut, on March 3, 2010. Her murder remains unsolved. In October 2019, Anike Niemeyer submitted a request under the Freedom of Information Act ("FOIA") to the Madison Police Department ("MPD") on behalf of herself and Hamburg's son, Madison Hamburg, seeking permission to inspect or obtain copies of the records the MPD had compiled during the course of its investigation of Hamburg's murder. General Statutes § 1-210 (b) (3) (D) of the FOIA permits the police to refuse to disclose records that contain "information to be used in a prospective law enforcement action if prejudicial to such action." The MPD denied the request, citing § 1-210 (b) (3) (D), and Niemeyer and Madison filed a complaint with the FOIC. After a hearing, the FOIC concluded that the requested records were not exempt from disclosure pursuant to § 1-210 (b) (3) (D) because the MPD failed to establish (1) that the requested records were "to be used in a prospective law enforcement action" and (2) that the disclosure of the requested records would be "prejudicial to such action." The FOIC ordered the disclosure of the requested records, and the plaintiffs appealed to the trial court. That court concluded that, where a law enforcement agency claims exemption from disclosure under § 1-210 (b) (3) (D), it must establish that there is a "reasonable possibility" that a "prospective law enforcement action," i.e., an arrest and prosecution, will occur, and noted that it was unclear whether the FOIC had used that standard in rendering its decision. The court, however, determined that the FOIC's possible failure to apply the "reasonable possibility" standard constituted harmless error because substantial evidence in the record supported the FOIC's finding that a "prospective law enforcement action" in the Hamburg case was speculative. The trial court accordingly affirmed the FOIC's decision. The plaintiffs appealed to the Appellate Court, and the Supreme Court transferred the appeal to itself. The plaintiffs claim that it is fundamentally unfair to them for the trial court to adopt a new legal standard, i.e., the "reasonable probability" standard, and then retroactively apply it to the facts of this case to their detriment. They also challenge the court's adoption of the "reasonable possibility" standard and claim that the appropriate standard for the disclosure exemption under § 1-210 (b) (3) (D) should be that a criminal action is "reasonably anticipated." Alternatively, the plaintiffs contend that the trial court erred in not finding that they met the newly adopted standard. In

addition, they claim that the trial court erred in concluding that the substantial evidence in the record supported the FOIC's finding that a "prospective law enforcement action" was purely speculative. Finally, the plaintiffs claim that the trial court erred in not finding that the FOIC acted arbitrarily and capriciously in violation of General Statutes § 4-183 (j) of the UAPA when, in its decision, it required the plaintiffs to provide (a) evidence that an actual law enforcement action was pending and (b) multiple witnesses to testify about any prospective law enforcement action resulting from the murder investigation.

CONNECTICUT DERMATOLOGY GROUP, PC, et al. *v.* TWIN CITY FIRE INS. CO., et al., SC 20695
Judicial District of Hartford

Insurance; Contract Construction; Whether Trial Court Erred in Concluding that Insureds' Claims for Business Income Losses Resulting from COVID-19 Pandemic Were Barred by Virus Exclusion Provision in All Risk Policies Covering Insureds' Real Property. The plaintiffs, operators of healthcare facilities in Connecticut, each had identical all-risk commercial insurance policies issued by the defendants. After the defendants denied coverage for losses incurred by the plaintiffs as a result of the COVID-19 pandemic, the plaintiffs brought the present action seeking a declaratory judgment and asserting claims of breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of CUTPA/CUIPA. The defendants Twin City Fire Insurance Company and Sentinel Insurance Company Limited (insurers) moved for summary judgment on the plaintiffs' complaint, and the plaintiffs filed a cross motion for partial summary judgment. The plaintiffs argued that they were entitled to coverage under a provision in the policies that provided for payment for the loss of income resulting from the suspension of business operations if such suspension was caused by "direct physical loss of or physical damage to" the covered property. According to the plaintiffs, the suspension of and/or reduction in their business operations due to the effects of the pandemic amounted to a physical loss of the plaintiffs' business properties, and, therefore, they were entitled to recover for the resultant loss of income. The plaintiffs also argued that they were entitled to coverage under a provision in the policies permitting recovery of lost income when access to the covered property "is specifically prohibited by order of a civil authority as the direct result of a [c]overed [c]ause of [l]oss to property in the immediate area of" the covered property. The insurers countered that the plaintiffs

were not entitled to coverage because there was no physical loss to the properties and access to the properties was not specifically prohibited by a civil authority. They further argued that coverage for the plaintiffs' losses was excluded under a provision barring payment for loss or damage caused by the "[p]resence, growth, proliferation, spread or any activity of 'fungi,' wet rot, dry rot, bacteria or virus." The trial court granted the insurers' motion for summary judgment and denied the plaintiffs' cross motion, concluding that the virus exclusion provision clearly and unambiguously excluded the plaintiffs' claimed losses from coverage. The plaintiffs appealed to the Appellate Court, and the appeal was subsequently transferred to the Supreme Court. The plaintiffs claim on appeal that the trial court's grant of summary judgment in favor of the insurers was improper because the virus exclusion provision can reasonably be interpreted as only barring recovery for losses stemming from the actual, on-site presence of viral contamination and not losses attributable to a pandemic. The insurers counter that the plaintiffs' interpretation of the policy language is unreasonable. They further argue, as an alternative ground for affirmance, that pandemic-related business-interruption losses are not compensable because, under the plain language of the policies, loss of business income is recoverable only if caused by a tangible alteration to the property.

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.

Jessie Opinion
Chief Staff Attorney

NOTICES

JUDGE TRIAL REFEREE DESIGNEES ARBITRATION PROCEEDINGS - TRIAL DE NOVO

The following judge trial referees have been duly designated by Chief Justice Richard A. Robinson in accordance with subsection (b) of Connecticut General Statutes § 52-434 to hear proceedings resulting from a demand for a trial de novo pursuant to subsection (e) of Connecticut General Statutes § 52-549z, for the period July 1, 2022 through June 30, 2023:

Hon. Taggart D. Adams	Hon. James T. Graham	Hon. John W. Pickard
Hon. Gerard I. Adelman	Hon. Edward C. Graziani	Hon. Patty Jenkins Pittman
Hon. Arnold W. Aronson	Hon. Arthur C. Hadden	Hon. Kenneth B. Povodator
Hon. Jon C. Blue	Hon. Susan B. Handy	Hon. Barbara M. Quinn
Hon. Richard E. Burke	Hon. William Holden	Hon. Dale W. Radcliffe
Hon. Patrick J. Clifford	Hon. Bruce P. Hudock	Hon. Susan S. Reynolds
Hon. Henry S. Cohn	Hon. Edward R. Karazin, Jr.	Hon. Eddie Rodriguez, Jr.
Hon. Juliette L. Crawford	Hon. James G. Kenefick, Jr.	Hon. John J. Ronan
Hon. William T. Cremins	Hon. Edward T. Krumeich, II	Hon. Philip A. Scarpellino
Hon. John F. Cronan	Hon. William J. Lavery	Hon. Karen Sequino
Hon. Julia DiCocco Dewey	Hon. Douglas S. Lavine	Hon. Robert B. Shapiro
Hon. Edward J. Dolan	Hon. Charles T. Lee	Hon. Michael E. Shay
Hon. Edward S. Domnarski	Hon. Joseph A. Licari, Jr.	Hon. Michael R. Sheldon
Hon. Constance L. Epstein	Hon. Shelley A. Marcus	Hon. Joseph M. Shortall
Hon. Francis J. Foley, III	Hon. John F. Mulcahy, Jr.	Hon. Lois Tanzer
Hon. Stephen F. Frazzini	Hon. Thomas V. O'Keefe, Jr.	Hon. Kevin Tierney
Hon. Robert L. Genuario	Hon. Richard N. Palmer	Hon. John Turner
Hon. James P. Ginocchio	Hon. Joseph H. Pellegrino	Hon. Heidi G. Winslow

Hon. Patrick L. Carroll III, Judge
Chief Court Administrator

Notice of Certification as Authorized House Counsel

Upon recommendation of the Bar Examining Committee, in accordance with § 2-15A of the Connecticut Practice Book, notice is hereby given that the following individuals have been certified by the Superior Court as Authorized House Counsel for the organization named:

Certified as of June 14, 2022:

Elisabeth M. McCarthy	Voyager Aviation Holdings, LLC

Certified as of June 19, 2022:

Robin D. Fineman	JobTarget

Certified as of June 21, 2022:

Sean E. Paquette	The Hartford Steam Boiler Inspection and Insurance
Lori M. Schroeder	Biohaven Pharmaceuticals, Inc.
James E. Steinthal	L Catterton

Certified as of June 22, 2022:

Philip A. Hampton	Beanstalk Media, Inc.

Certified as of June 24, 2022:

Jaime K. Nielsen	U.S. Bank

Hon. Patrick L. Carroll III
Chief Court Administrator