OFFICIAL

2007

CONNECTICUT PRACTICE BOOK

(Revision of 1998)

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2007

CONNECTICUT PRACTICE BOOK

(Revision of 1998)

CONTAINING

RULES OF PROFESSIONAL CONDUCT

CODE OF JUDICIAL CONDUCT

RULES FOR THE SUPERIOR COURT

RULES OF APPELLATE PROCEDURE

APPENDIX OF FORMS

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EXPLANATORY NOTES

The Superior Court Rules as organized herein were first published in the Connecticut Law Journal dated July 29, 1997. At that time, many existing and new sections were assigned temporary numbers. In addition, this 2007 edition of the Practice Book contains amendments to the Rules of Professional Conduct, the Superior Court Rules and the Rules of Appellate Procedure. The amendments were published in the Connecticut Law Journals dated July 25, 2006, and August 22, 2006.

A parenthetical notation about the origin of each rule is found at the end of every section in this volume. The notation (P.B. 1978-1997 Sec. ___) indicates the number of the section in the 1978-1997 Practice Book corresponding to the current section. Current numbers of any sections corresponding to the sections in the 1978-1997 Practice Book appear in the Reference Tables following the text of the rules.

The notation (1998) indicates that the section was new in the 1998 Practice Book, taking effect October 1, 1997. The temporary numbers assigned to those rules in the Connecticut Law Journal of July 29, 1997, appear in the Reference Tables following the text of the rules.

The notation (See P.B. 1978-1997 Sec. ___) (1998) indicates that the section was *modeled* on a rule in the 1978-1997 Practice Book, but was actually adopted for the first time to take effect October 1, 1997.

There may be significant differences between the rules in this volume and those in the 1978-1997 Practice Book on which they were *modeled*. The temporary numbers assigned to those rules in the July 29, 1997 Connecticut Law Journal appear in the Reference Tables following the text of the rules.

Where a section was adopted or amended after 1997, a parenthetical notation to that effect appears either immediately following the text of the section, or following the parenthetical notation concerning the derivation of the section. The Table of Practice Book Changes following the text of the rules documents the dates on which rules were adopted, repealed or amended.

Histories describing the nature of amendments and Commentaries indicating the intended purpose of new rules or amendments to existing rules are printed following the text of new or amended rules. Histories are included for only those rules that were adopted or amended to take effect in the year corresponding to the current edition of the Practice Book. For example, Histories corresponding to the rule changes taking effect January 1, 2000, appeared only in the 2000 edition of the Practice Book and not in subsequent editions. Users wanting to access the Histories documenting rule changes made in a given year should not discard the corresponding edition. Commentaries to rules or amendments also are to be found only in the edition of the Practice Book corresponding to the year of the rule or amendment, with the exception of the Commentaries to the rules on sealing of files and closure of the courtroom, which will be retained on a cumulative basis.

The Commentaries were prepared by the drafters of proposed amendments to the rules and are included in this volume for informational purposes only. *Commentaries are not adopted by the Judges and Justices when they vote to adopt proposed rule changes*.

Beginning in 2000, Amendment Notes were incorporated into the Rules of Professional Conduct and the Code of Judicial Conduct. Those notes, approved by the Rules Committee of the Superior Court to explain the revisions to the Rules of Professional Conduct and Code of Judicial Conduct, appear only in the edition of the Practice Book corresponding to the year of the revision and not in subsequent editions.

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The system used to number each section is based on the chapter in which the section is located. Each section has a two-part number. The first part of the number designates the chapter, and the second part designates the number of the section within that chapter. (Chapter 1 begins with 1-1, chapter 2 with 2-1, etc.) The internal breakdown of individual rules follows the style of the General Statutes. Subsections are designated by lower case letters in parentheses, (a), (b), subdivisions are designated by numbers in parentheses, (1), (2), and subparagraphs are designated by upper case letters in parentheses, (A), (B).

The Rules of Appellate Procedure, as well as the Superior Court Rules, were reorganized in 1998. The reorganization of the Rules of Appellate Procedure was completed subsequent to the publication of the July 29, 1997 Connecticut Law Journal and was published in this volume for the first time in 1998. The goal in reorganizing the Rules of Appellate Procedure was to present them in the order in which an appellant might approach the appeal process, i.e., rules on whether to appeal, how to file, what to do next, when argument will take place, opinions and reargument. Rules on various special proceedings were organized into separate chapters. No substantive changes were made in the course of reorganization, but there were editorial changes.

In 2002, an Appendix was added following the Index. The Appendix contains certain forms that previously had been in Volume 2 of the 1978-1997 Practice Book.

Effective January 1, 2003, the rules pertaining to procedure in juvenile matters were amended and reorganized. The amendments initially were published in the Connecticut Law Journal of July 23, 2002. The July 23, 2002 Connecticut Law Journal gave notice that the rules on juvenile matters, which, since 1998, had been found in chapters 26 through 35, had been moved to chapters 26a through 35a. In the Practice Book itself, however, the original numbers of the juvenile rules were retained wherever possible.

Every year certain nonsubstantive, technical editorial changes are made to a number of the rules. Some, but not all, of these changes are explained in Technical Change notes.

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THE ATTORNEY'S OATH

You solemnly swear or solemnly and sincerely affirm, as the case may be, that you will do nothing dishonest, and will not knowingly allow anything dishonest to be done in court, and that you will inform the court of any dishonesty of which you have knowledge; that you will not knowingly maintain or assist in maintaining any cause of action that is false or unlawful; that you will not obstruct any cause of action for personal gain or malice; but that you will exercise the office of attorney, in any court in which you may practice, according to the best of your learning and judgment, faithfully, to both your client and the court; so help you God or upon penalty of perjury. (General Statutes § 1-25 and annotations.)

(Amended pursuant to Public Act 02-71 to take effect Oct. 1, 2002.)

RULES OF PROFESSIONAL CONDUCT

Preamble

Scope

Rules

Commentaries

Preamble: A Lawyer's Responsibilities

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, a lawyer examines a client's legal affairs and reports about them to the client or to others on the client's behalf.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. All lawyers should work to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or

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secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the Rules of Professional Conduct contained a Preface. The Preface read: "The Rules contained in the Rules of Professional Conduct as adopted by the American Bar Association and as recommended, with revisions, by the Connecticut Bar Association for adoption were approved by the judges of the superior court, effective October 1, 1986. The Commentaries following each Rule, as adopted by the American Bar Association and as recommended, with revisions, by the Connecticut Bar Association for adoption were approved in principle by the judges of the superior court, effective October 1, 1986. These Rules do not, however, exhaust the moral and ethical considerations that should inform and guide a lawyer, but simply provide a framework for the ethical practice of law."

Prior to 2007, "Preamble: A Lawyer's Responsibility" read: "A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

"As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

"In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

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"A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

"As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

"Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

"A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

"In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

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"To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

"The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

"Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship."

Scope

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be

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established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

The lawyer's exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

The Commentary accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Commentaries are intended as guides to interpretation, but the text of each Rule is authoritative. Commentaries do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules. The Commentaries are sometimes used to alert lawyers to their responsibilities under other law, such as court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general.

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "professional" was deleted from the fifth sentence of the first paragraph before "discretion," and the phrase "to exercise professional judgment" was added after "discretion." The last two sentences of the first paragraph were deleted. Prior to 2007, those sentences read: "Many of the Commentaries use the term 'should.' Commentaries do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules."

In 2007, "may" was deleted from the third sentence of the third paragraph, before the word "attach," and "[s]ee Rule 1.18" was added after the end of that sentence.

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In 2007, "itself" was added to the first sentence of the sixth paragraph, before the phrase "give rise to a cause of action," and the phrase "against a lawyer" was added after "give rise to a cause of action." The last sentence of the sixth paragraph was substituted for the following sentence: "Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty."

The last two sentences of the ninth paragraph were added in 2007.

AMENDMENT NOTES: Originally, the Terminology section immediately followed the "Scope" of the Rules of Professional Conduct. It has now been made a rule and numbered as such.

RULES OF PROFESSIONAL CONDUCT

Rule
1.0. Terminology

Client-Lawyer Relationships

1.1. Competence
1.2. Scope of Representation and Allocation of Authority between Client and Lawyer
1.3. Diligence
1.4. Communication
1.5. Fees
1.6. Confidentiality of Information
1.7. Conflict of Interest: Current Clients
1.8. Conflict of Interest: Prohibited Transactions
1.9. Duties to Former Clients
1.10. Imputation of Conflicts of Interest: General Rule
1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees
1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
1.13. Organization as Client
1.14. Client with Diminished Capacity
1.15. Safekeeping Property
1.16. Declining or Terminating Representation
1.17. Sale of Law Practice
1.18. Duties to Prospective Client

Counselor

2.1. Advisor
2.2. Intermediary [Repealed]
2.3. Evaluation for Use by Third Persons
2.4. Lawyer Serving as Third-Party Neutral

Advocate

3.1. Meritorious Claims and Contentions
3.2. Expediting Litigation
3.3. Candor toward the Tribunal
3.4. Fairness to Opposing Party and Counsel
3.5. Impartiality and Decorum
3.6. Trial Publicity
3.7. Lawyer as Witness
3.8. Special Responsibilities of a Prosecutor

Rule
3.9. Advocate in Nonadjudicative Proceedings

Transactions with Persons Other than Clients

4.1. Truthfulness in Statements to Others
4.2. Communication with Person Represented by Counsel
4.3. Dealing with Unrepresented Person
4.4. Respect for Rights of Third Persons

Law Firms and Associations

5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers
5.2. Responsibilities of a Subordinate Lawyer
5.3. Responsibilities regarding Nonlawyer Assistants
5.4. Professional Independence of a Lawyer
5.5. Unauthorized Practice of Law
5.6. Restrictions on Right to Practice

Public Service

6.1. Pro Bono Publico Service
6.2. Accepting Appointments
6.3. Membership in Legal Services Organization
6.4. Law Reform Activities Affecting Client Interests
6.5. Nonprofit and Court-Annexed Limited Legal Services Programs

Information about Legal Services

7.1. Communications concerning a Lawyer's Services
7.2. Advertising
7.3. Personal Contact with Prospective Clients
7.4. Communication of Fields of Practice
7.4A. Certification as Specialist
7.4B. Legal Specialization Screening Committee
7.4C. Application by Board or Entity to Certify Lawyers as Specialists
7.5. Firm Names and Letterheads

Maintaining the Integrity of the Profession

8.1. Bar Admission and Disciplinary Matters
8.2. Judicial and Legal Officials
8.3. Reporting Professional Misconduct
8.4. Misconduct
8.5. Disciplinary Authority; Choice of Law

AMENDMENT NOTES: The paragraphs below originally appeared immediately after the Scope. They have been amended, moved and numbered as Rule 1.0.

Rule 1.0. Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in ques-

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tion to be true. A person's belief may be inferred from circumstances.

(b) "Client" or "person" as used in these Rules includes an authorized representative unless otherwise stated.

(c) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See subsection (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(i) "Reasonable" or "reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(j) "Reasonable belief" or "reasonably believes," when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know," when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(*l*) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(m) "Substantial," when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostatting, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, what is now Rule 1.0 appeared as unnumbered paragraphs under the heading, "Terminology" immediately after the Scope. Those paragraphs read: " 'Belief' or 'believes' denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

" 'Consult' or 'consultation' denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

" 'Firm' or 'law firm' denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization. See Commentary, Rule 1.10.

" 'Fraud' or 'fraudulent' denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

" 'Knowingly,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

" 'Partner' denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.

" 'Reasonable' or 'reasonably' when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

" 'Reasonable belief' or 'reasonably believes' when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

" 'Reasonably should know' when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

" 'Substantial' when used in reference to degree or extent denotes a material matter of clear and weighty importance."

COMMENTARY: **Confirmed in Writing.** If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in

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reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm. Whether two or more lawyers constitute a firm within paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud. When used in these Rules, the terms ''fraud'' or ''fraudulent'' refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent. Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2 (c), 1.6 (a) and 1.7 (b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7 (b) and 1.9 (a). For a definition of ''writing'' and ''confirmed in writing,'' see subsections (o) and (c). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8 (a) and (g). For a definition of ''signed,'' see subsection (o).

Screened. The definition of ''screened'' applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11, 1.12 or 1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer shall acknowledge in writing to the client the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

CLIENT-LAWYER RELATIONSHIPS

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(P.B. 1978-1997, Rule 1.1.)

COMMENTARY: **Legal Knowledge and Skill**. In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in

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the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2 (c).

Maintaining Competence. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) Subject to subsections (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(P.B. 1978-1997, Rule 1.2.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Scope of Representation."

Prior to 2007, subsection (a) read: "A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to subsections (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify."

Prior to 2007, subsection (c) read: "A lawyer may limit the objectives of the representation if the client consents after consultation."

In 2007, subsection (e) was deleted. That section read: "When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct."

COMMENTARY: **Allocation of Authority between Client and Lawyer.** Subsection (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in subsection (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a) (1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take such action as is impliedly authorized to carry out the representation.

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be

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applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).

At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities. Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation. The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, when a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent. Nothing in Rule 1.2 shall be construed to authorize limited appearances before any tribunal unless otherwise authorized by law or rule.

Although this Rule affords the lawyer and client substantial latitude to limit the scope of representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions. Subsection (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally believed legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

Subsection (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Subsection (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of subsection (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a) (5).

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

(P.B. 1978-1997, Rule 1.3.)

COMMENTARY: A lawyer must pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

A lawyer's work load must be controlled so that each matter can be handled competently.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters

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undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4 (a) (2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0 (f), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(P.B. 1978-1997, Rule 1.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this rule read: "(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

"(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

COMMENTARY: Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client. If these Rules or other law require that a particular decision about the representation be made by the client, subsection (a) (1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action. See Rule 1.2 (a).

Subsection (a) (2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, subsection (a) (3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subsection (a) (4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation, a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0 (f).

AMENDMENT NOTES: That part of the above paragraph that begins with the words "Adequacy of communication" was a separate paragraph in the Rules.

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, when the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

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Withholding Information. In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4 (3) directs compliance with such rules or orders.

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

(b) The scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing before the fees or expenses to be billed at higher rates are actually incurred. This subsection shall not apply to public defenders or in situations where the lawyer will be paid by the court or a state agency.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subsection (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages of the recovery that shall accrue to the lawyer as a fee in the event of settlement, trial or appeal, whether and to what extent the client will be responsible for any court costs and expenses of litigation, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution of marriage or civil union or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) A contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and

(2) The total fee is reasonable.

(P.B. 1978-1997, Rule 1.5.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the first part of subsection (a), which appeared before the numbered subdivisions, read: "A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:"

Prior to 2007, subsection (b) read: "When the lawyer has not regularly represented the client, the basis or rate of the fee, whether and to what extent the client will be responsible for any court costs and expenses of litigation, and the scope of the matter to be undertaken shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. This subsection shall not apply to public defenders or in situations where the lawyer will be paid by the court or a state agency."

In 2007, "a" was inserted in the second sentence of subsection (c) before "writing," and "signed by the client" was inserted after "writing." Also, what is now the third sentence of subsection (c) was added.

In 2007, "or civil union" was added in subdivision (1) and subsection (d), after the phrase "dissolution of marriage."

In 2007, "in writing" was added to subdivision (1) of subsection (e), following the phrase "[t]he client is advised."

COMMENTARY: **Basis or Rate of Fee.** Subsection (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Subsection (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as

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telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

When the lawyer has regularly represented a client, the lawyer and the client ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding. Absent extraordinary circumstances, the lawyer should send the written fee statement to the client before any substantial services are rendered, but in any event not later than ten days after commencing the representation.

Contingent fees, like any other fees, are subject to the reasonableness standard of subsection (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment. A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16 (d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8 (a) because such fees often have the essential qualities of a business transaction with the client.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees. Subsection (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee. A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Contingent fee agreements must be in writing signed by the client and must otherwise comply with subsection (c) of this Rule. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

Subsection (e) does not prohibit or regulate divisions of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees. If an arbitration or mediation procedure such as that in Practice Book Section 2-32 (a) (3) has been established for resolution of fee disputes, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d).

(b) A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm.

(c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary to:

(1) Prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another;

(2) Prevent, mitigate or rectify the consequence of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used;

(3) Secure legal advice about the lawyer's compliance with these Rules;

(4) Comply with other law or a court order.

(d) A lawyer may reveal such information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond

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to allegations in any proceeding concerning the lawyer's representation of the client.

(P.B. 1978-1997, Rule 1.6.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, subsection (a) read: "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in subsections (a), (b), (c), and (d)."

In 2007, "or fraudulent" was added to subsection (b) and subdivision (1) of subsection (c), following the phrase "committing a criminal."

In 2007, "[p]revent, mitigate, or" became the first three words of subdivision (2) of subsection (c), and subdivisions (3) and (4) were added to subsection (c).

COMMENTARY: This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9 (c) (2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8 (b) and 1.9 (c) (1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0 (f) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of client-lawyer confidentiality is given effect by related bodies of law, the attorney-client privilege, the work product doctrine and the Rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The Rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality Rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

Subsection (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure. Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specific lawyers.

AMENDMENT NOTES: That part of the above paragraph that begins with the words "Lawyers in a firm may," was previously a separate paragraph in the Rules.

Disclosure Adverse to Client. Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality Rule is subject to limited exceptions. Subsection (b) recognizes the overriding value of life and physical integrity and requires disclosure in certain circumstances.

Subsection (c) (1) is a limited exception to the Rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0 (e), that is likely to result in substantial injury to the financial or property interests of another. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although subsection (c) (1) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2 (d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13 (c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

Subsection (c) (2) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Subsection (c) (2) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subsection (c) (3) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct. The lawyer's right to disclose such information to a second lawyer pursuant to subsection (c) (3) does not give the second lawyer the duty or right to disclose such information under subsections (b), (c) and (d). The first lawyer's client does not become the client of the second lawyer just because the first lawyer seeks the second lawyer's advice under (c) (3).

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the

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lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Subsection (d) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

A lawyer entitled to a fee is permitted by subsection (d) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, subsection (c) (6) permits the lawyer to make such disclosures as are necessary to comply with the law.

A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, subsection (c) (4) permits the lawyer to comply with the court's order.

Subsection (b) requires and subsection (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Subsection (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in subsections (c) (1) through (c) (4). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by subsection (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by subsection (b). See Rules 1.2 (d), 4.1 (b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3 (c).

Acting Competently to Preserve Confidentiality. A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client. The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9 (c) (2). See Rule 1.9 (c) (1) for the prohibition against using such information to the disadvantage of the former client.

Rule 1.7. Conflict of Interest: Current Clients

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) Except as provided in subsection (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under subsection (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or the same proceeding before any tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(P.B. 1978-1997, Rule 1.7.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was ''Conflict of Interest: General Rule.'' The rule read: ''(a) A

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lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.''

COMMENTARY: **General Principles.** Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of ''informed consent'' and ''confirmed in writing,'' see Rule 1.0 (f) and (c).

Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under subsection (a) and obtain their informed consent, confirmed in writing. The clients affected under subsection (a) include both of the clients referred to in subsection (a) (1) and the one or more clients whose representation might be materially limited under subsection (a) (2).

A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of subsection (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also Commentary to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Commentary to Rule 1.3 and Scope.

AMENDMENT NOTES: That part of the below paragraph that begins with ''If a conflict arises'' was previously part of the above paragraph in the Rules.

If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of subsection (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9; see also the next paragraph in this Commentary and the first paragraph under the ''Special Considerations in Common Representation'' heading, below.

Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9 (c).

Identifying Conflicts of Interest: Directly Adverse. Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

AMENDMENT NOTES: The above paragraph was previously under the ''Loyalty to a Client'' heading in this Commentary.

Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation. Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

AMENDMENT NOTES: The above paragraph was previously under the ''Loyalty to Client'' heading in this Commentary.

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Lawyer's Responsibilities to Former Clients and Other Third Persons. In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts. The lawyer's own interests must not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients; see also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

AMENDMENT NOTES: The above paragraph was previously titled "Lawyer's Interests" and was located later in the Commentary for this Rule.

When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

A lawyer is prohibited from engaging in a sexual relationship with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8 (j).

Interest of Person Paying for a Lawyer's Service. A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8 (f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of subsection (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

AMENDMENT NOTES: The above paragraph was previously located later in the Commentary for this Rule.

Prohibited Representations. Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in subsection (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

AMENDMENT NOTES: The above paragraph was previously titled "Consultation and Consent" and was located earlier in the Commentary for this Rule.

Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under subsection (b) (1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

Subsection (b) (2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law.

Subsection (b) (3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or the same proceeding before any tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0 [n]), such representation may be precluded by subsection (b) (1).

Informed Consent. Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0 (f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See second and third paragraphs under the "Special Considerations in Common Representation" heading in this Commentary, below (effect of common representation on confidentiality).

Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing. Subsection (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0 (c); see also Rule 1.0 (o) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0 (c). The requirement of a writing does not supplant the need in most cases for the lawyer to talk

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with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent. A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other clients and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict. Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of subsection (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future conflicts that might arise and the actual and reasonably foreseeable adverse consequences of those conflicts, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under subsection (b).

Conflicts in Litigation. Subsection (b) (3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by subsection (a) (2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of subsection (b) are met.

AMENDMENT NOTES: The above paragraph was previously located earlier in the Commentary for this Rule.

Ordinarily, a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying subsection (a) (1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts. Conflicts of interest under subsections (a) (1) and (a) (2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see second paragraph under "Identifying Conflicts of Interest: Directly Adverse" heading in this Commentary, above. Relevant factors in determining whether there is significant risk of material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See first paragraph under "Identifying Conflicts of Interest: Material Limitation" heading in this Commentary, above.

For example, conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration, the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests.

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Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation. In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege.

As to the duty of confidentiality, continued common representation will almost certainly be inappropriate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and the lawyer should inform each client that each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. To that end, the lawyer must, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides prior to disclosure that some matter material to the representation should be disclosed to the lawyer but be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2 (c).

Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients. A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13 (a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

AMENDMENT NOTES: The above paragraph was previously included under the "Other Conflict Situations" heading located earlier in the Commentary for this Rule.

Conflict Charged by an Opposing Party. Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

Rule 1.8. Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction, including investment services, with a client or former client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client or former client unless:

(1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client or former client and are fully disclosed and transmitted in writing to the client or former client in a manner that can be reasonably understood by the client or former client;

(2) The client or former client is advised in writing that the client or former client should consider

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the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction;

(3) The client or former client gives informed consent in writing signed by the client or former client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction;

(4) With regard to a business transaction, the lawyer advises the client or former client in writing either (A) that the lawyer will provide legal services to the client or former client concerning the transaction, or (B) that the lawyer will not provide legal services to the client or former client and that the lawyer is involved as a business person only and not as a lawyer representing the client or former client and that the lawyer is not one to whom the client or former client can turn for legal advice concerning the transaction; and

(5) With regard to the providing of investment services, the lawyer advises the client or former client in writing (A) whether such services are covered by legal liability insurance or other insurance, and either (B) that the lawyer will provide legal services to the client or former client concerning the transaction, or (C) that the lawyer will not provide legal services to the client or former client and that the lawyer is involved as a business person only and not as a lawyer representing the client or former client and that the lawyer is not one to whom the client or former client can turn to for legal services concerning the transaction. Investment services shall only apply where the lawyer has either a direct or indirect control over the invested funds and a direct or indirect interest in the underlying investment.

For purposes of subsection (a) (1) through (a) (5), the phrase "former client" shall mean a client for whom the two year period starting from the conclusion of representation has not expired.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may pay court costs and expenses of litigation on behalf of a client, the repayment of which may be contingent on the outcome of the matter;

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) The client gives informed consent;

(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) Information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) Make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) Settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) Acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) Contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

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(k) While lawyers are associated in a firm, a prohibition in the foregoing subsections (a) through (i) that applies to any one of them shall apply to all of them.

(P.B. 1978-1997, Rule 1.8.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, subdivisions (2) and (3) of subsection (a) read: "(2) The client or former client is advised in writing that the client or former client should consider seeking the advice of independent counsel in the transaction and is given a reasonable opportunity to do so;

"(3) The client or former client consents in writing thereto;"

In 2007, the second paragraph of subdivision (5) of subsection (a) was added. Also, the phrase "gives informed consent, except as permitted or required by these Rules" was substituted for "consents after consultation" in subsection (b).

Prior to 2007, subsection (c) read: "A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee."

In 2007, the phrase "gives informed consent" was substituted for "consents after consultation" in subdivision (1) of subsection (f).

Prior to 2007, subsection (g) read: "A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement."

Prior to 2007, subsection (h) did not contain subdivisions. It read: "A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith."

Prior to 2007, subsection (i) read: "A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship."

In 2007, what had been subsection (j) became subsection (i), and subsections (j) and (k) were added.

COMMENTARY: **Business Transactions between Client and Lawyer.** Subsection (a) expressly applies to former clients as well as existing clients. A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of subsection (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in subsection (a) are unnecessary and impracticable.

Subsection (a) (1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subsection (a) (2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Subsection (a) (3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0 (f) (definition of informed consent).

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here, the lawyer's role requires that the lawyer must comply, not only with the requirements of subsection (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

If the client is independently represented in the transaction, subsection (a) (2) of this Rule is inapplicable, and the subsection (a) (1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subsection (a) (1) further requires.

Use of Information Related to Representation. Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Subsection (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Subsection (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2 (d), 1.6, 1.9 (c), 3.3, 4.1 (b), 8.1 and 8.3.

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Gifts to Lawyers. A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subsection (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

AMENDMENT NOTES: The above two paragraphs were previously included under the "Transactions Between Client and Lawyer" heading located earlier in the Commentary for this Rule.

This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights. An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subsection (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and subsections (a) and (i) of this Rule.

Financial Assistance. Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services. Subsection (f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning confidentiality and Rule 1.7 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure.

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4 (c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7 (a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7 (b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that subsection. Under Rule 1.7 (b), the informed consent must be confirmed in writing.

Aggregate Settlements. Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2 (a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The Rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0 (f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims. Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This subsection does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this subsection limit the ability of

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lawyers to practice in the form of a limited liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation. Subsection (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like subsection (e), the general rule, which has its basis in common law champerty and maintenance, is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in subsection (e). In addition, subsection (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of subsection (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships. The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interest and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7 (a) (2).

Imputation of Prohibitions. Under subsection (k), a prohibition on conduct by an individual lawyer in subsections (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. The prohibition set forth in subsection (j) is personal and is not applied to associated lawyers.

Rule 1.9. Duties to Former Clients

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9 (c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(P.B. 1978-1997, Rule 1.9.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Conflict of Interest: Former Client." Prior to 2007, this rule read: "A lawyer who has formerly represented a client in a matter shall not thereafter:

"(1) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

"(2) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known."

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COMMENTARY: After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the interest of the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See last paragraph of this Commentary, below. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving between Firms. When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

AMENDMENT NOTES: The above paragraph entitled "Lawyers Moving Between Firms" was previously a Commentary to Rule 1.10.

Subsection (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9 (c). Thus, if a lawyer, while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10 (b) for the restrictions on a firm once a lawyer has terminated association with the firm.

Application of subsection (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof rests upon the firm whose disqualification is sought.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9 (c).

AMENDMENT NOTES: The above three paragraphs were previously located under the "Confidentiality" heading under the Commentary to Rule 1.10.

Subsection (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under subsections (a) and (b). See Rule 1.0 (f). With regard to the effectiveness

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of an advance waiver, see Commentary to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

AMENDMENT NOTES: The last sentence of the above paragraph was previously the beginning of a new paragraph.

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

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

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

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

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

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

(P.B. 1978-1997, Rule 1.10.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Imputed Disqualification: General Rule," and subsection (a) read: "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8 (c), 1.9 or 2.2."

Prior to 2007, subsection (b) read: "When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9 (2) that is material to the matter."

In 2007, what had been subsection (c) became the new subsection (b), and what had been subsection (d) became the new subsection (c). Also, in 2007, the new subsection (d) was added.

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

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

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

The Rule in subsection (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does subsection (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0 (k) and 5.3.

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

Rule 1.10 (c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7 (b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7 and its Commentary. For a definition of informed consent, see Rule 1.0 (f).

Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11 (d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to

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government lawyers associated with the individually disqualified lawyer.

AMENDMENT NOTES: The above paragraph was previously located earlier in the Commentary to this Rule under the "Definition of 'Firm' " heading.

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

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9 (c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under subsection (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

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

(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) Is subject to Rules 1.7 and 1.9; and

(2) Shall not:

(i) Participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) Negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially; except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12 (b) and subject to the conditions stated in Rule 1.12 (b).

(e) As used in this Rule, the term "matter" includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

(P.B. 1978-1997, Rule 1.11.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Successive Government and Private Employment."

Prior to 2007, this rule read: "(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

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

"(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

"(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

"(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

"(1) Participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

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"(2) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

"(d) As used in this Rule, the term 'matter' includes:

"(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

"(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

"(e) As used in this Rule, the term 'confidential government information' means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public."

COMMENTARY: A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0 (f) for the definition of informed consent.

Subsections (a) (1), (a) (2) and (d) (1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, subsection (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subsection (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subsections (a) (2) and (d) (2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subsection (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subsection (d). As with subsections (a) (1) and (d) (1), Rule 1.10 is not applicable to the conflicts of interest addressed by these subsections.

This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary, obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in subsection (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subsections (a) (2) and (d) (2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subsection (d), the latter agency is not required to screen the lawyer as subsection (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Commentary to Rule 1.13.

Subsections (b) and (c) contemplate a screening arrangement. See Rule 1.0 (*l*) (requirements for screening procedures). These subsections do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subsection (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Subsections (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

For purposes of subsection (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) Except as stated in subsection (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally as a judge or other adjudicative officer, or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a

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law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by subsection (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

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

(2) Written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

(P.B. 1978-1997, Rule 1.12.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Former Judge or Arbitrator."

Prior to 2007, subsection (a) read: "Except as stated in subsection (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after disclosure."

Prior to 2007, subsection (b) read: "A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator."

In 2007, "timely" was added to subdivision (1) of subsection (c) before "screened." Also, "parties and any" was added to subdivision (2) of subsection (c) before the phrase "appropriate tribunal," and "them" was substituted for "it" after the phrase "to enable."

COMMENTARY: Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0 (b) and (e). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, subsection (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this subsection are met.

Requirements for screening procedures are stated in Rule 1.0 (*l*). Subsection (c) (1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Rule 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

Unless the lawyer reasonably believes that it is not in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Except as provided in subsection (d), if

(1) Despite the lawyer's efforts in accordance with subsection (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law and

(2) The lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Subsection (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to subsections (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under

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either of those subsections, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(P.B. 1978-1997, Rule 1.13.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this rule read: "(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

"(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

"(1) Asking reconsideration of the matter;

"(2) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

"(3) Referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

"(c) If, despite the lawyer's efforts in accordance with subsection (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16, as he or she may do under any of the other circumstances set out in Rule 1.16.

"(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

"(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders."

COMMENTARY: **The Entity as the Client.** An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Commentary apply equally to unincorporated associations. "Other constituents" as used in this Commentary means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

AMENDMENT NOTES: The second sentence in the above paragraph was previously the beginning of a new paragraph.

When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Subsection (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0 (g), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

In determining how to proceed under subsection (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the persons involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably believe conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable,

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minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

Subsection (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules. The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 and 4.1. Subsection (c) of this Rule supplements Rule 1.6 (b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6 (b) (1)–(6). Under subsection (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6 (b) (2) and 1.6 (b) (3) may permit the lawyer to disclose confidential information. In such circumstances, Rule 1.2 (d) may also be applicable, in which event, withdrawal from the representation under Rule 1.6 (a) (1) may be required.

Subsection (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in subsection (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to subsection (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these subsections, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency. The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role. There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation. Subsection (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions. Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Rule 1.14. Client with Diminished Capacity

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act

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in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to subsection (b), the lawyer is impliedly authorized under Rule 1.6 (a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

(P.B. 1978-1997, Rule 1.14.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Client under a Disability."

Prior to 2007, this rule read: "(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

"(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest."

COMMENTARY: The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not constitute a waiver of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under subsection (b), must look to the client, and not family members, to make decisions on the client's behalf.

If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2 (d).

Taking Protective Action. If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in subsection (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then subsection (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition. Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so by these rules or other law, the lawyer may not disclose such information. When taking protective action pursuant to subsection (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, subsection (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person

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or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance. In an emergency where the health, safety or a financial interest of a person with diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

A lawyer who acts on behalf of a person with diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Rule 1.15. Safekeeping Property

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

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

(2) An "eligible institution" means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the federal government, or (ii) an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in paragraph (g) (4) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (g) (5) below.

(3) "Interest- or dividend-bearing account" means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "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.

(4) "IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection (g) (7) 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 paragraph (g) (5) below.

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

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

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

(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

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

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Notwithstanding subsections (b), (c), (d), (e) and (f), a lawyer or law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for (i) the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and (ii) law school scholarships based on financial need. Lawyers and law firms shall only place a client's or third person's funds which are less than $10,000 in amount or are expected to be held for a period of not more than sixty business days in an IOLTA account and shall only establish IOLTA accounts at eligible institutions that meet the following requirements:

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

(2) The IOLTA account shall include only clients' or a third person's funds which are less than $10,000 in amount or are expected to be held for a period of not more than sixty business days.

(3) 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 practice, 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.

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

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a 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

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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.

(5) 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 this program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

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

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the Superior Court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

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

(D) Submit to audits by the judicial branch.

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

(A) Establishing that all funds the organization might receive pursuant to subsection (g) (3) (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.

(7) A lawyer's or law firm's own funds may only be deposited in a clients' funds account in an amount that the lawyer or law firm reasonably determines to be necessary to pay financial institution fees or service charges on the account or to obtain a waiver of fees and service charges on the account.

(8) Nothing in this subsection (g) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA

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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.

(P.B. 1978-1997, Rule 1.15.) (Amended June 26, 2006, to take effect Sept. 1, 2006.)

HISTORY—2007: Prior to September 1, 2006, this rule read: "(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for such period of time as may be required under applicable law after termination of the representation.

"(b) 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, 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.

"(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

"(d) Notwithstanding subsections (a), (b) and (c), a lawyer or law firm shall participate in a 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 law school scholarships based on financial need by placing clients' funds which are less than $10,000 in amount or are expected to be held for a period of not more than sixty business days in interest-bearing trust accounts in compliance with the following provisions:

"(1) No earnings from such an account shall be made available to a lawyer or law firm.

"(2) The account shall include only clients' funds which are less than $10,000 in amount or are expected to be held for a period of not more than sixty business days.

"(3) Any such interest-bearing trust account may be established with any financial institution which is authorized by federal or state law to do business in Connecticut and is a member of the Federal Deposit Insurance Corporation. At the direction of the lawyer, funds in such accounts may be temporarily invested by such financial institution in repurchase agreements fully collateralized by United States government obligations. Funds deposited in such accounts shall be subject to withdrawal upon request by the depositor and without delay.

"(4) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to other depositors. Higher rates offered by the institution to customers whose deposits meet certain time and/or amount requirements, such as those offered in certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposit funds, so long as there is no impairment of the right to withdraw or transfer principal immediately. Lawyers or law firms depositing clients' funds under this program shall direct the depository institutions:

"(A) To remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;

"(B) To transmit with each remittance to the organization a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and

"(C) To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the organization, and the rate and method of interest computation.

"(5) 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 this program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

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

"(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the Superior Court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the advisory panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

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

"(D) Submit to audits by the judicial branch.

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"(6) 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 (d) (4) (A) above will be exclusively devoted 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 and to the collection, management and distribution of such funds.

"(B) Establishing that all interest or dividends earned on such funds, net of any service charges or fees, shall additionally 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.

"(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 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.

"(7) Nothing in this section shall prevent a lawyer or law firm from depositing a client's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate interest-bearing account established on behalf of and for the benefit of the client."

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

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

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

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

The 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.

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in subsection (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in subsection (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

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(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. If the representation of the client is terminated either by the lawyer withdrawing from representation or by the client discharging the lawyer, the lawyer shall confirm the termination in writing to the client before or within a reasonable time after the termination of the representation.

(P.B. 1978-1997, Rule 1.16.) (Amended June 25, 2001, to take effect Jan. 1, 2002; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the subdivisions in subsection (b) were redesignated. Subdivision (1) now begins with "if withdrawal can be accomplished without material adverse effect on the interests of the client." That phrase had previously been in the introductory clause in subsection (b). In 2007, the words "or if" at the end of subsection (b) were deleted. What had been subdivision (1) is now subdivision (2), and what had been subdivision (2) is now subdivision (3). What had been subdivision (3) is now subdivision (4), with the following changes: "taking action" has been substituted for "pursuing an objective" and "with which the lawyer has a fundamental disagreement" has been substituted for "imprudent." What had been subdivision (4), is now subdivision (5), what had been subdivision (5) is now subdivision (6), and what had been subdivision (6) is now subdivision (7).

In 2007, the first sentence of subsection (c) was added. Also, the phrase "giving reasonable notice to the client," was added to subsection (d), before the phrase "allowing time for employment of other counsel."

COMMENTARY: A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed upon assistance has been concluded. See Rules 1.2 (c) and 6.5. See also Rule 1.3, Commentary.

Mandatory Withdrawal. A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge. A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself or herself.

If the client has diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Assisting the Client upon Withdrawal. Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.5.

Confirmation in Writing. A written statement to the client confirming the termination of the relationship and the basis of the termination reduces the possibility of misunderstanding the status of the relationship. The written statement should be sent to the client before or within a reasonable time after the termination of the relationship.

Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in Connecticut;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

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(d) The fees charged clients shall not be increased by reason of the sale.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller. The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation.

The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17 (a).

This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5 (e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice. The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice. Negotiations between a seller and a prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. This procedure is contemplated as an in camera review of privileged materials.

All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements between Client and Purchaser. The sale may not be financed by increases in fees charged exclusively to the clients of the purchased practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards. Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0 [f] for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule. This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements,

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and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Rule 1.18. Duties to Prospective Client

(a) A person who discusses or communicates with a lawyer concerning the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to subsection (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in subsection (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in subsection (d).

(d) When the lawyer has received disqualifying information as defined in subsection (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; and

(ii) written notice is promptly given to the prospective client.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

Not all persons who transmit information to a lawyer are entitled to protection under this Rule. A person who transmits information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of subsection (a).

It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Subsection (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0 (f) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

Even in the absence of an agreement, under subsection (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

Under subsection (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under subsection (d) (1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of subsection (d) (2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0 (*l*) (requirements for screening procedures).

Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

COUNSELOR

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

(P.B. 1978-1997, Rule 2.1.)

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COMMENTARY: **Scope of Advice.** A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice. In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation.

A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Rule 2.2. Intermediary

[Repealed as of Jan. 1, 2007.]

Rule 2.3. Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

(P.B. 1978-1997, Rule 2.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "provide" was substituted for "undertake" in subsection (a), after the phrase "[a] lawyer may," and what was previously designated as subdivision (1) of subsection (a) became part of subsection (a), following the phrase "use of someone other than the client if." In 2007, "and" was deleted as the conjunction linking subdivisions (1) and (2) of subsection (a). In 2007, the new subsection (b) was substituted for what had been subdivision (2) to subsection (a). What had been subsection (b) became subsection (c), and "authorized" was substituted for "required" before the phrase "in connection with" in that subsection.

COMMENTARY: **Definition.** An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. A legal evaluation of a client should also be distinguished from a report by counsel for an insured to the insured's carrier on the status of the matter that is the subject of representation, provided the report does not contain matter that is detrimental to the client's relationship with the insurance carrier. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client. When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no

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such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information. The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily, a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.

Obtaining Client's Informed Consent. Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6 (a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6 (a) and 1.0 (f).

Financial Auditors' Requests for Information. When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Rule 2.4. Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, subsection (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege as well as the inapplicability of the duty of confidentiality. The extent of disclosure required under this subsection will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0 [n]), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding

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that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

(P.B. 1978-1997, Rule 3.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "in law and fact" was inserted in the first sentence, following the phrase "unless there is a basis."

COMMENTARY: The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

(P.B. 1978-1997, Rule 3.2.)

COMMENTARY: Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Rule 3.3. Candor toward the Tribunal

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in subsections (a) and (b) continue at least to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) When, prior to judgment, a lawyer becomes aware of discussion or conduct by a juror which violates the trial court's instructions to the jury, the lawyer shall promptly report that discussion or conduct to the trial judge.

(P.B. 1978-1997, Rule 3.3.)

HISTORY—2007: Prior to 2007, this rule read: "(a) A lawyer shall not knowingly:

"(1) Make a false statement of material fact or law to a tribunal;

"(2) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

"(3) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

"(4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

"(b) The duties stated in subsection (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

"(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

"(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse."

COMMENTARY: This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0 (n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority,

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such as a deposition. Thus, for example, subsection (a) (3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer. An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2 (d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2 (d), see the Commentary to that Rule. See also the Commentary to Rule 8.4 (2).

Legal Argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subsection (a) (2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence. Subsection (a) (3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness' testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

The duties stated in subsections (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements.

The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0 (g). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify.

AMENDMENT NOTES: The above paragraph was previously entitled "Refusing to Offer Proof Believed to Be False" and was located later in the Commentary for this Rule.

Remedial Measures. Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done.

The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2 (d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

AMENDMENT NOTES: A portion of the above paragraph was previously entitled "False Evidence" and was located earlier in the Commentary for this Rule.

Preserving Integrity of Adjudicative Process. Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, subsection (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's

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client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding. Nothing in Rule 3.3 (e) is meant to limit a lawyer's obligation to take appropriate action after judgment has entered.

Duration of Obligation. A practical time limit on the obligation to rectify false evidence or false statements of fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. In criminal and juvenile delinquency matters, the duty to correct a newly discovered and material falsehood continues until the defendant or delinquent is discharged from custody or released from judicial supervision, whichever occurs later. The lawyer shall notify the tribunal that false evidence or false statements of fact were made.

Ex Parte Proceedings. Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal. Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16 (a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16 (b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(1) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(2) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(4) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(5) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(6) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(A) The person is a relative or an employee or other agent of a client; and

(B) The lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(7) Present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

(P.B. 1978-1997, Rule 3.4.)

COMMENTARY: The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Subdivision (1) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

With regard to subdivision (2), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

Subdivision (6) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

Rule 3.5. Impartiality and Decorum

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

A lawyer shall not:

(1) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

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(2) Communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(3) Communicate with a juror or prospective juror after discharge of the jury if:

(a) the communication is prohibited by law or court order;

(b) the juror has made known to the lawyer a desire not to communicate; or

(c) the communication involves misrepresentation, coercion, duress or harassment; or

(4) engage in conduct intended to disrupt a tribunal or ancillary proceedings such as depositions and mediations.

(P.B. 1978-1997, Rule 3.5.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Impartiality and Decorum of the Tribunal." Prior to 2007, item (2) read: "Communicate ex parte with such a person except as permitted by law; or." In 2007, what is now item (3) was added, as were (3) (a), (b) and (c). What had been item (3) is now item (4), and "or ancillary proceedings such as depositions and mediations" was added to the end of that item, following the phrase "intended to disrupt a tribunal."

COMMENTARY: Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Rule 3.6. Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding subsection (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this subsection shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(c) No lawyer associated in a firm or government agency with a lawyer subject to subsection (a) shall make a statement prohibited by subsection (a).

(P.B. 1978-1997, Rule 3.6.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this rule read: "(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

"(b) Notwithstanding subsection (a), a lawyer may state:

"(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

"(2) information contained in a public record;

"(3) that an investigation of the matter is in progress;

"(4) the scheduling or result of any step in litigation;

"(5) a request for assistance in obtaining evidence and information necessary thereto;

"(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

"(7) in a criminal case: in addition to subparagraphs (1) through (6):

"(i) identity, residence, occupation and family status of the accused;

"(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

"(iii) the fact, time and place of arrest; and

"(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

"(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

"(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a)."

COMMENTARY: (1) It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings,

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particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberations over questions of public policy.

(2) Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4 (3) requires compliance with such Rules.

(3) The Rule sets forth a basic general prohibition against a lawyer making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

(4) Certain subjects would not ordinarily be considered to present a substantial likelihood of material prejudice, such as:

(a) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(b) information contained in a public record;

(c) that an investigation of the matter is in progress;

(d) the scheduling or result of any step in litigation;

(e) a request for assistance in obtaining evidence and information necessary thereto;

(f) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(g) in a criminal case: in addition to subparagraphs (a) through (f):

(i) identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(5) There are, on the other hand, certain subjects which are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(a) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(b) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(e) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(6) Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudical comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

(7) Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

(8) See Rule 3.8 (5) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

(P.B. 1978-1997, Rule 3.7.)

HISTORY—2007: In 2007, "unless" was substituted for "except where" at the end of the introductory language in subsection (a).

COMMENTARY: Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule. The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

To protect the tribunal, subsection (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in subsections (a) (1) through (a) (3). Subsection (a) (1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Subsection (a) (2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is

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offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these two exceptions, subsection (a) (3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, subsection (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest. In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by subsection (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by subsection (a) (3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0 (c) for the definition of "confirmed in writing" and Rule 1.0 (f) for the definition of "informed consent."

Subsection (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by subsection (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(1) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(4) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

(P.B. 1978-1997, Rule 3.8.)

COMMENTARY: A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. See also Rule 3.3 (d), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

Subdivision (3) does not apply to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in subdivision (4) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3 (a) through (c), 3.4 (1) through (3), and 3.5.

(P.B. 1978-1997, Rule 3.9.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "body" was inserted after "legislative" and "agency" was substituted for "tribunal" after "administrative."

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COMMENTARY: In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3 (a) through (c), 3.4 (a) through (c) and 3.5.

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(1) Make a false statement of material fact or law to a third person; or

(2) Fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

(P.B. 1978-1997, Rule 4.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "to a third person" was deleted from item (2) after the phrase "[f]ail to disclose a material fact."

COMMENTARY: **Misrepresentation.** A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact. This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client. Under Rule 1.2 (d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Subdivision (2) states a specific application of the principle set forth in Rule 1.2 (d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under subdivision (2) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(P.B. 1978-1997, Rule 4.2.)

COMMENTARY: This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. (Compare Rule 3.4 [6]).

This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall

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not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(P.B. 1978-1997, Rule 4.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, what had been the first sentence was divided into two sentences, so that what is now the first sentence ends with "disinterested." What was part of the first sentence prior to 2007, is now part of the second sentence, beginning with "[w]hen the lawyer knows."

Prior to 2007, the last sentence of the rule read: "The lawyer shall make reasonable efforts to correct the misunderstanding." That sentence is now part of the second sentence. In 2007, the third sentence was added.

COMMENTARY: An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13 (d).

The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

See Rule 3.8 for particular duties of prosecutors in dealing with unrepresented persons.

Rule 4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

(P.B. 1978-1997, Rule 4.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, this rule was divided into subsections. What had been the entire rule became subsection (a), and subsection (b) was added.

COMMENTARY: Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Subsection (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(P.B. 1978-1997, Rule 5.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Responsibilities of a Partner or Supervisory Lawyer." In 2007, ", and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm," was inserted in subsection (a), following the phrase "[a] partner in a law firm." Also, in 2007, the phrase "or has comparable

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managerial authority" was added to subdivision (2) of subsection (c), following the phrase "[t]he lawyer is a partner."

COMMENTARY: Subsection (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0 (d). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Subsection (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

AMENDMENT NOTES: In the above paragraph, the sentence that begins with "This includes members of a partnership" was previously the beginning of a new paragraph.

Subsection (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in subsection (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

Subsection (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4 (1).

Subsection (c) (2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Professional misconduct by a lawyer under supervision could reveal a violation of subsection (b) on the part of the supervisory lawyer even though it does not entail a violation of subsection (c) because there was no direction, ratification or knowledge of the violation.

Apart from this Rule and Rule 8.4 (1), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2 (a).

Rule 5.2. Responsibilities of a Subordinate Lawyer

A lawyer is bound by the Rules of Professional Conduct notwithstanding that that lawyer acted at the direction of another person.

(P.B. 1978-1997, Rule 5.2.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this rule read: "(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that that lawyer acted at the direction of another person.

"(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty."

COMMENTARY: Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Rule 5.3. Responsibilities regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(1) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

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(3) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(A) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(B) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(P.B. 1978-1997, Rule 5.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, ", and a lawyer who individually or together with other lawyers possesses comparable managerial authority" was added to the beginning of subdivision (1) after "[a] partner." Also, "or has comparable managerial authority" was added to the beginning of subparagraph (B) of subdivision (3) after the phrase "[t]he lawyer is a partner."

COMMENTARY: Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Subdivision (1) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See first paragraph of Commentary to Rule 5.1. Subdivision (2) applies to lawyers who have supervisory authority over the work of a nonlawyer. Subdivision (3) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) A lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed upon purchase price; and

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

(P.B. 1978-1997, Rule 5.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, subdivision (2) of subsection (a) read: "A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and."

In 2007, "or occupies the position of similar responsibility in any form of association other than a corporation" was inserted in subdivision (2) of subsection (d), after the phrase "[a] nonlawyer is a corporate director or officer thereof."

COMMENTARY: The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subsection (c), such arrangements should not interfere with the lawyer's professional judgment.

This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8 (f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

Rule 5.5. Unauthorized Practice of Law

A lawyer shall not:

(1) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar, who has resigned from the bar, who has retired from the bar, or who has been suspended,

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disbarred, or placed on inactive status in the performance of activity that constitutes the unauthorized practice of law.

(P.B. 1978-1997, Rule 5.5) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect Jan. 1, 2003.)

COMMENTARY: The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Subdivision (2) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjustors, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(1) A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(2) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

(P.B. 1978-1997, Rule 5.6.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, ", shareholders, operating," was inserted in subdivision (1), after "[a] partnership," "or" was deleted after "[a] partnership" and ", or other similar type of" was inserted after "employment." Also, "client" was inserted in subdivision (2) between "statement of" and "controversy," and "between private parties" was deleted after "controversy."

COMMENTARY: An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Subdivision (1) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Subdivision (2) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

PUBLIC SERVICE

Rule 6.1. Pro Bono Publico Service

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

(P.B. 1978-1997, Rule 6.1.)

COMMENTARY: The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through disciplinary process.

The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services. Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services recommended by this Rule.

Rule 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(1) Representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(2) Representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(3) The client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

(P.B. 1978-1997, Rule 6.2.)

COMMENTARY: A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

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Appointed Counsel. For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(1) If participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(2) Where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

(P.B. 1978-1997, Rule 6.3.)

COMMENTARY: Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

(P.B. 1978-1997, Rule 6.4.)

COMMENTARY: Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2 (b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9 (a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 (a) with respect to the matter.

(b) A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2 (c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9 (c), are applicable to the limited representation.

(c) Except as provided in subsection (a) (2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs

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are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, subsection (a) requires compliance with Rules 1.7 or 1.9 (a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a) in the matter.

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, subsection (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by subsection (a) (2). Subsection (a) (2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a). By virtue of subsection (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9 (a) and 1.10 become applicable.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(P.B. 1978-1997, Rule 7.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this rule read: "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

"(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

"(2) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

"(3) Compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated."

COMMENTARY: This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

Statements, even if literally true, that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

See also Rule 8.4 (5) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

AMENDMENT NOTES: The intention concerning the above changes is to strike a balance between free speech interests and the need for consumer protection.

Rule 7.2. Advertising

(a) Subject to the requirements set forth in Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) (1) A copy or recording of an advertisement or communication shall be kept for three years after its last dissemination along with a record of when and where it was used. An electronic advertisement or communication shall be copied once every three months on a compact disk or similar technology and kept for three years after its last dissemination.

(2) A lawyer shall comply with the mandatory filing requirement of Practice Book Section 2-28A.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17.

(d) Any advertisement or communication made pursuant to this Rule shall include the name of at least one lawyer admitted in Connecticut responsible for its content. In the case of television advertisements, the name, address and telephone number of the lawyer admitted in Connecticut shall be displayed in bold print for fifteen seconds

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or the duration of the commercial, whichever is less, and shall be prominent enough to be readable.

(e) Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media.

(f) Every advertisement and written communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery, shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation. The disclosure concerning court costs and expenses of litigation shall be in the same print size and type as the information regarding the lawyer's fee and, if broadcast, shall appear for the same duration as the information regarding the lawyer's fee. If the information regarding the fee is spoken, the disclosure concerning court costs and expenses of litigation shall also be spoken.

(g) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(h) No lawyers shall directly or indirectly pay all or part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

(i) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:

(1) Subject to the requirements of Rule 7.3, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, fax numbers, website and e-mail addresses and domain names, and a designation such as "attorney" or "law firm."

(2) Date of admission to the Connecticut bar and any other bars and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the state or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer practices or is designated, subject to the requirements of Rule 7.4, or is certified pursuant to Rule 7.4A.

(6) Prepaid or group legal service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Fee for initial consultation and fee schedule.

(9) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(10) Nothing in this Rule prohibits a lawyer or law firm from permitting the inclusion in the law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

(P.B. 1978-1997, Rule 7.2.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, subsections (a) through (d) read: "(a) Subject to the requirements set forth in Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspapers or other periodicals, billboards and other signs, radio, television, and recorded messages the public may access by dialing a telephone number, or through written or recorded communication.

"(b) A copy or recording of an advertisement or communication shall be kept for three years after its last dissemination along with a record of when and where it was used.

"(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertisements or communications permitted by this Rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

"(d) Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media."

In 2007, what had been subsection (g) became the new subsection (d). Also, in 2007, "admitted in Connecticut" was added to subsection (d) after the phrase "at least one lawyer," and what is now the last sentence of subsection (d) was added. What had been subsection (d) became the new subsection (e), what had been subsection (e) became the new subsection (f), and what had been subsection (f) became the new subsection (g). In 2007, "fax numbers, website and e-mail addresses and domain names," was added to subdivision (1) of subsection (i), after the phrase "telephone service hours."

COMMENTARY: To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations

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of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; whether and to what extent the client will be responsible for any court costs and expenses of litigation; lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising. Subsection (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer. A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services [i] permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; [ii] require each participating lawyer to carry reasonably adequate malpractice insurance; [iii] act reasonably to assess client satisfaction and address client complaints; and [iv] do not refer prospective clients to lawyers who own, operate or are employed by the referral service).

A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

AMENDMENT NOTES: In recognition of the many technological advances that have been made, including the increasing use of the Internet, the changes to subsection (a) make it clear that lawyers may advertise through the new electronic media and that such advertisements are subject to the Rules of Professional Conduct. The change to subsection (d) will assist disciplinary authorities in identifying the individuals responsible for an advertisement in order to protect the public against misleading advertisements. In subsection (d), the display of the lawyer's name, address and telephone number must be easily legible. An example of what would be acceptable is the crawler messages that appear at the bottom of the screen on cable news stations.

Rule 7.3. Personal Contact with Prospective Clients

(a) A lawyer shall not initiate personal, live telephone, or real-time electronic contact, including telemarketing contact, with a prospective client for the purpose of obtaining professional employment, except in the following circumstances:

(1) If the prospective client is a close friend, relative, former client or one whom the lawyer reasonably believes to be a client;

(2) Under the auspices of a public or charitable legal services organization;

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization;

(4) If the prospective client is a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.

(b) A lawyer shall not contact, or send, a written or electronic communication to, a prospective client for the purpose of obtaining professional employment if:

(1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer;

(2) It has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

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(3) The communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;

(4) The written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter; or

(5) The written or electronic communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than forty days prior to the mailing of the communication.

(c) Every written communication, as well as any communication by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled ''Advertising Material'' in red ink on the first page of any written communication and the lower left corner of the outside envelope or container, if any, and at the beginning and ending of any communication by audio or video recording or other electronic means. If the written communication is in the form of a self-mailing brochure or pamphlet, the label ''Advertising Material'' in red ink shall appear on the address panel of the brochure or pamphlet. Brochures solicited by clients or prospective clients need not contain such mark. No reference shall be made in the communication to the communication having any kind of approval from the Connecticut bar. Written communications mailed to prospective clients shall be sent only by regular United States mail, not by registered mail or other forms of restricted delivery.

(d) The first sentence of any written communication concerning a specific matter shall be: ''If you have already retained a lawyer for this matter, please disregard this letter.''

(e) A written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(f) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked ''SAMPLE'' in red ink in a type size one size larger than the largest type used in the contract and the words ''DO NOT SIGN'' shall appear on the client signature line.

(g) Written communications shall be on letter-sized paper rather than legal-sized paper and shall not be made to resemble legal pleadings or other legal documents. This provision does not preclude the mailing of brochures and pamphlets.

(h) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the client.

(i) Notwithstanding the prohibitions in subsection (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

(P.B. 1978-1997, Rule 7.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, '', or real-time electronic'' was added to subsection (a) before ''contact'' and ''or'' was deleted between ''personal'' and ''live.''

Prior to 2007, the introductory language to subsection (b) read: ''A lawyer shall not contact, or send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm, partner, associate or any other lawyer affiliated with the lawyer or his or her firm, a written communication to, a prospective client for the purpose of obtaining professional employment if.''

In 2007, ''or electronic'' was inserted in the beginning of subdivision (5) of subsection (b), between ''[t]he written'' and ''communication.''

Prior to 2007, subsection (c) read: ''Every written communication used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled 'Advertising Material' in red ink on the first page of the communication and the lower left corner of the outside envelope. If the written communication is in the form of a self-mailing brochure or pamphlet, the label 'Advertising Material' in red ink shall appear on the address panel of the brochure or pamphlet. Brochures solicited by clients or prospective clients need not contain such mark. Every communication by audio or video recording or other electronic means must be clearly and prominently labeled 'Advertising Material' on the container and at the beginning and ending of the communication. No reference shall be made in the communication to the communication having any kind of approval from the Connecticut bar. Written communications mailed to prospective clients shall be sent only by regular United States mail, not by registered mail or other forms of restricted delivery.''

COMMENTARY: Unrestricted solicitation involves definite social harms. Among these are harassment, overreaching, provocation of nuisance litigation and schemes for systematic fabrication of claims, all of which were experienced prior to adoption of restrictions on solicitation. Measures reasonably designed to suppress these harms are constitutionally legitimate. At the same time, measures going beyond realization of such objectives would appear to be invalid under relevant decisions of the United States Supreme Court.

The use of general advertising and written, recorded and electronic communications to transmit information from lawyer

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to prospective client, rather than direct in-person, live telephone, or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone, or real-time electronic conversations between a lawyer to a prospective client can be disputed and are not subject to a third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

In determining whether a contact is permissible under Rule 7.3 (b), it is relevant to consider the time and circumstances under which the contact is initiated. For example, a person undergoing active medical treatment for traumatic injury is unlikely to be in an emotional state in which reasonable judgment about employing a lawyer can be exercised. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3 (b).

The requirement in Rule 7.3 (c) that certain communications be marked ''Advertising Material'' does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2. Subsection (i) of this Rule would permit an attorney to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan.

AMENDMENT NOTES: The above changes update the Rule to reflect current technological advances.

Rule 7.4. Communication of Fields of Practice

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows and as provided in Rule 7.4A:

(1) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation ''patent attorney'' or a substantially similar designation; and

(2) A lawyer engaged in admiralty practice may use the designation ''admiralty,'' ''proctor in admiralty'' or a substantially similar designation.

(P.B. 1978-1997, Rule 7.4.)

COMMENTARY: This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services, for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a ''specialist'' or that the lawyer's practice ''is limited to'' or ''concentrated in'' particular fields is not permitted. These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 7.4A. Certification as Specialist

(a) Except as provided in Rule 7.4, a lawyer shall not state or imply that he or she is a specialist in a field of law unless the lawyer is currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the superior court of this state. Among the criteria to be considered by the Rules Committee in determining upon application whether to approve a board or entity as an agency which may certify lawyers practicing in this state as being specialists, shall be the requirement that the board or entity certify specialists on the basis of published standards and procedures which (1) do not discriminate against any lawyer properly qualified for such certification, (2) provide a reasonable basis for the representation that lawyers so certified possess special competence, and (3) require redetermination of the special qualifications of certified specialists after a period of not more than five years.

(b) A lawyer shall not state that he or she is a certified specialist if the lawyer's certification has terminated, or if the statement is otherwise contrary to the terms of such certification.

(c) Certification as a specialist may not be attributed to a law firm.

(d) Lawyers may be certified as specialists in the following fields of law:

(1) Administrative law: The practice of law dealing with states, their political subdivisions, regional and metropolitan authorities and other

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public entities including, but not limited to, their rights and duties, financing, public housing and urban development, the rights of public employees, election law, school law, sovereign immunity, and constitutional law; practice before federal and state courts and governmental agencies.

(2) Admiralty: The practice of law dealing with all matters arising under the carriage of goods by sea act (COGSA), Harter Act, Jones Act, and federal and state maritime law including, but not limited to, the carriage of goods, collision and other maritime torts, general average, salvage, limitation of liability, ship financing, ship subsidies, the rights of injured sailors and longshoremen; practice before federal and state courts and governmental agencies (including the Federal Maritime Commission).

(3) Antitrust: The practice of law dealing with all matters arising under the Sherman Act, Clayton Act, Federal Trade Commission Act, Hart-Scott-Rodino Antitrust Improvements Act and State Antitrust Statutes including but not limited to, restraints of trade, unfair competition, monopolization, price discrimination, restrictive practices; practice before federal and state courts and governmental agencies.

(4) Appellate practice: The practice of law dealing with all procedural and substantive aspects of civil and criminal matters before federal and state appeals courts including, but not limited to, arguments and the submission of briefs.

(5) Business Bankruptcy: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was engaged in business before the institution of a Chapter 7, 9, or 11 proceeding. This includes, but is not limited to, business liquidations, business reorganizations, and related adversary and contested proceedings.

(6) Consumer Bankruptcy: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was not engaged in business before the institution of a Chapter 7, 12, or 13 proceeding. This includes, but is not limited to, liquidations, wage earner plans, family farmers and related adversary and contested proceedings.

(7) Civil rights and discrimination: The practice of law dealing with all matters arising under federal and state law relating to proper treatment in the areas of, among others, public accommodations, voting, employment, housing, administration of welfare and social security benefits; practice before federal and state courts and governmental agencies.

(8) Civil trial practice: The practice of law dealing with representation of parties before federal or state courts in all noncriminal matters.

(9) Commercial transactions: The practice of law dealing with all aspects of commercial paper, contracts, sales and financing, including, but not limited to, secured transactions.

(10) Consumer claims and protection: The practice of law dealing with all aspects of consumer transactions including, but not limited to, sales practices, credit transactions, secured transactions and warranties; all matters arising under the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Magnuson-Moss Act, the Truth in Lending Act, state statutes such as the ''Little FTC'' acts, and other analogous federal and state statutes.

(11) Corporate and business organizations: The practice of law dealing with all aspects of the formation, operation and dissolution of corporations, partnerships (general and limited), agency and other forms of business organizations.

(12) Corporate finance and securities: The practice of law dealing with all matters arising under the Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisors Act (or the Federal Securities Code, if adopted) and other federal and state securities statutes; financing corporate activities; mergers and acquisitions; practice before the Securities and Exchange Commission and state securities commissions.

(13) Criminal: The practice of law dealing with the prosecution or representation of persons accused of crimes at all stages of criminal proceedings in federal or state courts, including, but not limited to, the protection of the accused's constitutional rights.

(14) Environmental: The practice of law dealing with all aspects of the regulation of environmental quality by both federal and state governments; control of air pollution, water pollution, noise pollution, toxic substances, pesticides, and civilian uses of nuclear energy; solid waste/resource recovery; all matters arising under the National Environmental Policy Act, Clean Air Act, Federal Water Pollution Control Act, Noise Control Act, Solid Waste Disposal Act, Toxic Substance Control Act and other federal and state environmental statutes; practice before federal and state courts and governmental agencies.

(15) Estate planning and probate: The practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to the applicable tax consequences, both federal and state; the

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preparation of legal instruments in order to effectuate estate plans; administering estates, including tax related matters, both federal and state.

(16) Family and matrimonial: The practice of law dealing with all aspects of antenuptial and domestic relationships, separation and divorce, alimony and child support, child custody matters and adoption, giving due consideration to the tax consequences, and court proceedings relating thereto.

(17) Government contracts and claims: The practice of law dealing with all aspects of the negotiation and administration of contracts with federal and state governmental agencies.

(18) Immigration and naturalization: The practice of law dealing with obtaining and retaining permission to enter and remain in the United States including, but not limited to, such matters as visas, change of status, deportation and naturalization; representation of aliens before courts and governmental agencies; protection of aliens' constitutional rights.

(19) International: The practice of law dealing with all aspects of the relations among states, international business transactions, international taxation, customs and trade law and foreign and comparative law.

(20) Labor: The practice of law dealing with all aspects of employment relations (public and private) including but not limited to, unfair labor practices, collective bargaining, contract administration, the rights of individual employees and union members, employment discrimination; all matters arising under the National Labor Relations Act (Wagner Act), Labor Management Relations Act (Taft-Hartley Act), Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), Fair Labor Standards Act, Title VII of The Civil Rights Act of 1964, Occupational Safety and Health Act (OSHA), Employee Retirement Income Security Act (ERISA), other federal statutes and analogous state statutes; practice before the national labor relations board, analogous state boards, federal and state courts, and arbitrators.

(21) Military: The practice of law dealing with the presentation of parties before courts-martial and other military tribunals in disputes arising under the uniform code of military justice; the representation of veterans and their dependents in seeking government benefits due to them on account of military service; handling civil law problems of the military.

(22) Natural Resources: The practice of law dealing with all aspects of the regulation of natural resources such as coal, oil, gas, minerals, water and public lands; the rights and responsibilities relating to the ownership and exploitation of such natural resources.

(23) Patent, trademark and copyright: The practice of law dealing with all aspects of the registration, protection and licensing of patents, trademarks or copyrights; practice before federal and state courts in actions for infringement and other actions; the prosecution of applications before the United States Patent and Trademark Office; counseling with regard to the law of unfair competition as it relates to patents, trademarks and copyrights.

(24) (A) Residential Real Estate: The practice of law dealing with all aspects of real property transactions involving single one-to-four family residential dwellings when the client uses such dwelling or expresses in writing the intent to use such dwelling as the client's primary or other residence, including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums cooperatives, and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, and determination of property rights.

(B) Commercial Real Estate: The practice of law dealing with all aspects of real property transactions except for residential real estate as defined in subsection (A) of this subsection, including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, cooperatives and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, real estate development and financing (with due consideration to tax and securities consequences) and determination of property rights.

(25) Taxation: The practice of law dealing with all matters arising under the Internal Revenue Code, Employee Retirement Income Security Act (ERISA), state and local tax laws and foreign tax laws, including counseling with respect thereto; practice before federal and state courts and governmental agencies.

(26) Workers' Compensation: The practice of law dealing with the representation of parties before federal and state agencies, boards and courts in actions to determine eligibility for workers' compensation, and disability.

(P.B. 1978-1997, Rule 7.4A.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

AMENDMENT NOTES: No changes have been made to the above Rule.

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Rule 7.4B. Legal Specialization Screening Committee

(a) The Chief Justice, upon recommendation of the Rules Committee of the superior court, shall appoint a committee of five members of the bar of this state which shall be known as the "Legal Specialization Screening Committee." The Rules Committee of the superior court shall designate one appointee as chair of the Legal Specialization Screening Committee and another as vice chair to act in the absence or disability of the chair.

(b) When the committee is first selected, two of its members shall be appointed for a term of one year, two members for a term of two years, and one member for a term of three years, and thereafter all regular terms shall be three years. Terms shall commence on July 1. In the event that a vacancy arises in this position before the end of a term, the Chief Justice, upon recommendation of the Rules Committee of the superior court, shall appoint a member of the bar of this state to fill the vacancy for the balance of the term. The Legal Specialization Screening Committee shall act only with a concurrence of a majority of its members, provided, however, that three members shall constitute a quorum.

(c) The Legal Specialization Screening Committee shall have the power and duty to:

(1) Receive applications from boards or other entities for authority to certify lawyers practicing in this state as being specialists in a certain area or areas of law.

(2) Investigate each applicant to determine whether it meets the criteria set forth in Rule 7.4A (a).

(3) Submit to the Rules Committee of the superior court a written recommendation, with reasons therefor, for approval or disapproval of each application, or for the termination of any prior approval granted by the Rules Committee.

(4) Adopt regulations and develop forms necessary to carry out its duties under this section. The regulations and forms shall not become effective until first approved by the Rules Committee of the superior court.

(5) Consult with such persons deemed by the committee to be knowledgeable in the fields of law to assist it in carrying out its duties.

(P.B. 1978-1997, Rule 7.4B.)

AMENDMENT NOTES: No changes have been made to the above Rule.

Rule 7.4C. Application by Board or Entity to Certify Lawyers as Specialists

Any board or entity seeking the approval of the Rules Committee of the superior court for authority to certify lawyers practicing in this state as being specialists in a certain field or fields of law as set forth in Rule 7.4A (d), shall file an original and six copies of its application with the Legal Specialization Screening Committee pursuant to Rule 7.4B.

(P.B. 1978-1997, Rule 7.4C.)

AMENDMENT NOTES: No changes have been made to the above Rule.

Rule 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(P.B. 1978-1997, Rule 7.5.)

COMMENTARY: A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." Although the United States supreme court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

With regard to subsection (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application

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or in connection with a disciplinary matter, shall not:

(1) Knowingly make a false statement of material fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

(P.B. 1978-1997, Rule 8.1.)

COMMENTARY: The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Subdivision (2) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

Rule 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

(P.B. 1978-1997, Rule 8.2.)

COMMENTARY: Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

AMENDMENT NOTES: No changes have been made to the above Rule or Commentary.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. A lawyer may not condition settlement of a civil dispute involving allegations of improprieties on the part of a lawyer on an agreement that the subject misconduct not be reported to the appropriate disciplinary authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or General Statutes § 51-81d (f).

(P.B. 1978-1997, Rule 8.3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "who knows" was substituted for "having knowledge" in the first sentence of subsection (a) and subsection (b). Also, in 2007, "professional" was substituted for "disciplinary" in the first sentence of subsection (a).

Prior to 2007, subsection (c) read: "This rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of a court appointed or bar association committee that renders assistance to ill or impaired lawyers or while serving as a member of a bar association professional ethics committee."

COMMENTARY: Self-regulation of the legal profession requires that members of the profession initiate a disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency,

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such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subsections (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(P.B. 1978-1997, Rule 8.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "or to achieve results by means that violate the Rules of Professional Conduct or other law" was added to the end of subdivision (5), following "official."

COMMENTARY: Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Subdivision (1), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates subdivision (4) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate subdivision (4).

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2 (d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust, such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Rule 8.5. Disciplinary Authority; Choice of Law

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) For any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(P.B. 1978-1997, Rule 8.5.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this rule was "Jurisdiction." Prior to 2007, this rule read: "A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere."

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COMMENTARY: **Disciplinary Authority.** It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Rules 6 and 22, ABA *Model Rules for Lawyer Disciplinary Enforcement.* A lawyer who is admitted pursuant to Practice Book Sections 2-16 or 2-17 et seq. is subject to the disciplinary authority of this jurisdiction under Rule 8.5 (a) and appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law. A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

Subsection (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, and (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions.

Subsection (b) (1) provides that, as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provides otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, subsection (b) (2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

AMENDMENT NOTES: One of the changes to this Rule is the addition of a provision that a local jurisdiction has authority over a foreign lawyer who does not comply with local rules if the impact of the lawyer's conduct is on the local jurisdiction. This provision will enhance the ability of disciplinary authorities to enforce the Rules of Professional Conduct against foreign lawyers who advertise or who engage in other ethical misconduct in Connecticut.

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CODE OF JUDICIAL CONDUCT

Canon
1. A Judge Should Uphold the Integrity and Independence of the Judiciary
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All the Judge's Activities
3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice
5. A Judge Should Regulate the Judge's Extrajudicial Activities to Minimize the Risk of Conflict with His or Her Judicial Duties
6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extrajudicial Activities
7. A Judge Should Refrain from Political Activity Inappropriate to the Judicial Office

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NOTE: This code of judicial conduct was adopted by the judges of the superior court effective Oct. 1, 1974. The Canons and accompanying commentaries are those adopted by the House of Delegates of the American Bar Association on August 16, 1972, as adapted to conform with Connecticut judicial procedures.

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

(P.B. 1978-1997, Canon 1.)

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All the Judge's Activities

(a) A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(b) A judge should not allow the judge's family, social, or other relationships to influence his or her judicial conduct or judgment. The judge should not lend the prestige of judicial office to advance the private interests of others; nor should the judge convey or permit others to convey the impression that they are in a special position to influence him or her. The judge should not testify voluntarily as a character witness.

(P.B. 1978-1997, Canon 2.)

COMMENTARY: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. The judge must expect to be the subject of constant public scrutiny. The judge must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford the judge a privilege against testifying in response to an official summons.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship.

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of that office prescribed by law. In the performance of these duties, the following standards apply:

(a) Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of the judge's staff, court officials, and others subject to the judge's direction and control.

COMMENTARY: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(4) A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to

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law. A judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(A) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(B) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(C) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(D) A judge may, with the consent of the parties, confer separately with the parties and or their lawyers in an effort to mediate or settle matters pending before the judge.

(E) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

COMMENTARY: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Canon 3(a)(4), it is the party's lawyer, or, if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Canon 3(a)(4) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Canon 3(a)(4) are clearly met. A judge must disclose to all parties all ex parte communications described in Canons 3(a)(4)(A) and 3(a)(4)(B) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 3(a)(4) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and an appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(5) A judge should dispose promptly of the business of the court.

COMMENTARY: Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subdivision does not prohibit judges from making public statements in the course of their official duties, from explaining for public information the procedures of the court, or from correcting factual misrepresentation in the reporting of a case.

(Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, on an interim basis pursuant to the provisions of Sec. 1-9 (c) to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001.)

COMMENTARY: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by the Rules of Professional Conduct.

(b) Administrative Responsibilities.

(1) A judge should diligently discharge his or her administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require the judge's staff and court officials subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. A judge is not required to disclose information gained by the judge while serving as a member of a committee that renders assistance to ill or impaired judges or lawyers or while serving as a member of a bar association professional ethics committee.

COMMENTARY: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body. The judge who receives this information still has discretion to report it to the appropriate authority, depending on the seriousness of the conduct and the circumstances involved.

(4) A judge, in the exercise of the judge's power of appointment, should appoint on the basis of merit, should avoid favoritism, and should make only those appointments which are necessary. A judge should not approve compensation of

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appointees beyond the fair value of services rendered.

COMMENTARY: Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subdivision.

(5) A judge shall not knowingly advocate or knowingly participate in the appointment, employment, promotion or advancement of a relative in or to a position in the judicial branch. For purposes of this subdivision, relative means grandfather, grandmother, father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(c) Disqualification.

(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(A) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(B) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

COMMENTARY: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subparagraph; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if his or her impartiality might reasonably be questioned because of such association.

(C) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(D) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

COMMENTARY: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3(c)(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3(c)(1)(D)(iii) may require the judge's disqualification.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such contribution will not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary proceeding or in any matter concerning restitution or subrogation relating to such a client security fund;

(Amended June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY: This is intended to make clear that the restrictions imposed by *Dacey v. Connecticut Bar Assn.*, 184 Conn. 21 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.

(3) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the judicial review council. When the judge becomes aware that such a lawsuit or complaint has been filed against him or her, the judge should, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge.

(Amended June 25, 2001, to take effect Jan. 1, 2002.)

(4) A judge should be informed about the judge's personal and fiduciary financial interests, and make a reasonable effort to be informed about the personal financial interests of his or her spouse and minor children residing in the judge's household.

(5) For the purposes of this section:

(A) the degree of relationship is calculated according to the civil law system;

(Amended June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY: According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if the judge's or the judge's spouse's parent, grandparent, uncle or aunt, sibling, or niece's or nephew's spouse were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

(B) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(C) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

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(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(d) Remittal of Disqualification.

A judge disqualified by the terms of Canon 3(c)(1)(C) or Canon 3(c)(1)(D) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

(P.B. 1978-1997, Canon 3.)

COMMENTARY: This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that the party's consent will be subsequently filed.

Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his or her judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before him or her:

(1) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

(2) A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

(3) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. The judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. The judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

(P.B. 1978-1997, Canon 4.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extrajudicial activities are governed by Canon 5.

Canon 5. A Judge Should Regulate the Judge's Extrajudicial Activities to Minimize the Risk of Conflict with His or Her Judicial Duties

(a) Avocational Activities. A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his or her office or interfere with the performance of his or her judicial duties.

COMMENTARY: Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from society.

(b) Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of his or her judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

COMMENTARY: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he or she is affiliated to determine if it is proper to continue his or her relationship with it. For example,

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in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his or her office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. The judge should not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

COMMENTARY: A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

(c) Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of his or her judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subdivision (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

(3) A judge should manage his or her investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, he or she should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(A) a judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(B) a judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(C) a judge or a member of the judge's family residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and, if its value exceeds $100, the judge reports it in the same manner as he or she reports compensation pursuant to statute.

(5) For the purposes of this section "member of the judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(6) A judge is not required by this Code to disclose his or her income, debts, or investments, except as provided in this Canon and Canon 3 and as provided by statute.

COMMENTARY: Canon 3 requires a judge to disqualify himself or herself in any proceeding in which the judge has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his or her judicial duties; Canon 6 requires the judge to report all compensation the judge receives for activities outside his or her judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his or her financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in his or her judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to his or her judicial duties.

(d) Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of his or her judicial duties. "Member of the judge's family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) A judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before him or her, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

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COMMENTARY: The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

COMMENTARY: A judge's obligation under this Canon and obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5(c)(3).

(e) Arbitration. A judge should not act as an arbitrator or mediator, except with respect to court annexed alternate dispute resolution programs.

(Amended June 29, 1998, to take effect Jan. 1, 1999.)

(f) Practice of Law. A judge should not practice law.

(Amended June 29, 1998, to take effect Jan. 1, 1999.)

(g) Extrajudicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

(P.B. 1978-1997, Canon 5.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

COMMENTARY: Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extrajudicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial resources created by today's crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

Canon 6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extrajudicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

(2) Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

(P.B. 1978-1997, Canon 6.)

Canon 7. A Judge Should Refrain from Political Activity Inappropriate to the Judicial Office

Political Conduct in General.

(a) A judge should not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(3) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

(b) A judge should resign from office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that such a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

(c) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

Compliance with the Code of Judicial Conduct

(a) All full-time judges and family support magistrates appointed pursuant to General Statutes § 46b-231 (f) shall comply with this Code.

(b) Trial Referees and Senior Judges. The term ''judge'' includes senior judge and trial referee, except where the context clearly denotes a different meaning. Trial referees and senior judges are not required to comply with Canon 5 (d) and (g).

(Amended June 25, 2001, to take effect Jan. 1, 2002.)

Effective Date of Compliance

(a) This Code shall become effective on October 1, 1974.

(b) Persons to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it. If, however, the demands on an individual's time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

(1) continue to act as an officer, director, or nonlegal advisor of a family business;

(2) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a family member.

(P.B. 1978-1997, Canon 7.)

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[Repealed as of Jan. 1, 2003.]

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SUPERIOR COURT—GENERAL PROVISIONS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 1-1. Scope of Rules

(a) The rules for the superior court govern the practice and procedure in the superior court in all civil and family actions whether cognizable as cases at law, in equity or otherwise, in all criminal proceedings and in all proceedings on juvenile matters. These rules also relate to the admission, qualifications, practice and removal of attorneys.

(b) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to civil, family, criminal and juvenile matters in the superior court.

(c) The term ''judicial authority,'' as used in the rules for the superior court, means the superior court, any judge thereof, each judge trial referee when the superior court has referred a case to such trial referee pursuant to General Statutes § 52-434, and for purposes of the small claims rules only, any magistrate appointed by the chief court administrator pursuant to General Statutes § 51-193*l*.

(P.B. 1978-1997, Sec. 1.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 1-2. Assignments to Take Precedence

Assignments for oral argument in the supreme court and appellate court shall take precedence over all other judicial branch assignments.

(P.B. 1998.)

Sec. 1-3. Divisions of Superior Court

The superior court shall be divided into four divisions: family, civil, criminal and housing.

(P.B. 1978-1997, Sec. 2.)

Sec. 1-4. Family Division

The family division of the superior court shall consist of the following parts:

(1) J—Juvenile matters including neglect, dependency, delinquency, families with service needs and termination of parental rights.

(2) S—Support and paternity actions.

(3) D—All other family relations matters, including dissolution of marriage or civil union cases.

(P.B. 1978-1997, Sec. 3.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the words ''or civil union'' were inserted in subsection (3) after the phrase "dissolution of marriage.''

COMMENTARY—2007: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.

Sec. 1-5. Civil Division

The civil division of the superior court shall consist of the following parts:

(1) H—Summary process cases and all other landlord and tenant matters returnable to the geographical areas.

(2) S—Small claims actions.

(3) A—Administrative appeals.

(4) J—Jury matters.

(5) C—Court matters.

(P.B. 1978-1997, Sec. 4.)

Sec. 1-6. Criminal Division

The criminal division of the superior court shall consist of the following parts:

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(1) A—Capital felonies, class A felonies, and unclassified felonies punishable by sentences of more than twenty years.

(2) B—Class B felonies and unclassified felonies punishable by sentences of more than ten years but not more than twenty years.

(3) C—Class C felonies and unclassified felonies punishable by sentences of more than five years but not more than ten years.

(4) D—Class D felonies and all other crimes, violations, motor vehicle violations, and infractions.

(P.B. 1978-1997, Sec. 5.)

Sec. 1-7. Housing Division (Only in Judicial Districts Specified by Statute)

The housing division of the superior court shall consist of the following part:

(1) H—Housing matters as defined by General Statutes § 47a-68.

(P.B. 1978-1997, Sec. 5A.)

Sec. 1-8. Rules to Be Liberally Interpreted

The design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice.

(P.B. 1978-1997, Sec. 6.)

Sec. 1-9. Publication of Rules; Effective Date

(a) Each rule hereinafter adopted shall be promulgated by being published once in the Connecticut Law Journal. Such rule shall become effective at such date as the judges of the superior court shall prescribe, but not less than sixty days after its promulgation. The judges may waive the sixty day provision if they deem that circumstances require that a rule or a change in an existing rule be adopted expeditiously.

(b) Prior to such adoption the proposed revisions to the rules or a summary thereof shall be published in the Connecticut Law Journal with a notice stating the time when, the place where and the manner in which interested persons may present their views thereon.

(c) Upon recommendation by the Rules Committee, the judges of the superior court may, by vote at a meeting or by mail vote as set forth in subsection (d), waive the provisions of subsection (b) if they deem that circumstances require that a rule or a change in an existing rule be adopted expeditiously, provided that the adoption of any rules or changes in existing rules in connection with such waiver shall be on an interim basis until a public hearing has been held and the judges have thereafter acted on such revisions and such action has become effective. With respect to such rules adopted on an interim basis the judges shall prescribe the effective date thereof following publication in the Connecticut Law Journal.

(d) For a mail vote under subsection (c) to be effective, a written notice setting forth the proposed rule or change in an existing rule, together with a statement as to the effective date thereof, shall be mailed to all the judges of the superior court. In the event that no objection from any judge is received by the counsel to the Rules Committee within the time specified in such notice, such rule or change shall become effective on the date specified in the notice until further action is taken at the next meeting of the judges.

(P.B. 1978-1997, Sec. 7.)

Sec. 1-10. Cameras and Electronic Media; In General

(a) Except as otherwise provided by these rules, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions. A judicial authority may authorize:

(1) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(3) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(A) the means of recording will not distract participants or impair the dignity of the proceedings;

(B) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(C) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(D) the reproduction will be exhibited only for instructional purposes in educational institutions.

(b) An attorney in good standing in this state, who has in his or her possession a picture identification card authorized by the office of the chief court administrator indicating that he or she is an attorney, may possess in a court facility an electronic device, including, but not limited to, a cellular telephone, portable computer, or personal digital assistant, which device has the capacity to broadcast, record, or take photographs. Such devices shall not be used in any court facility for

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the purpose of broadcasting or recording audio or video, or for any photographic purposes, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use such devices in such office. Cellular telephones may be used in a court facility for telephonic purposes to transmit and receive voice signals only, but in no event shall they be used in any courtroom, lockup, chambers, or offices, except that any person employed in a state's attorneys' office or a public defenders' office that is located in a court facility may use a cellular telephone in such office. Personal computers may be used, with the permission of the judicial authority, in a courtroom in conjunction with the conduct of a hearing or trial. A violation of this subsection may constitute misconduct or contempt. This subsection shall be in force for a period of one year from its effective date, unless terminated sooner or extended beyond said period by vote of the judges of the superior court, to enable an analysis of the effects of this subsection to be made and reported to such judges. This subsection shall not apply to attorneys who are employees of the Judicial Branch. Such attorneys shall comply with Judicial Branch policies concerning the possession and use of electronic devices in court facilities. This subsection shall not be deemed to restrict in any way the possession or use of electronic devices in court facilities by judges of the superior court, judge trial referees, state referees, family support magistrates or family support referees.

(P.B. 1978-1997, Sec. 7B.) (Amended June 20, 2005, to take effect Oct. 1, 2005; June 26, 2006, extended for a one year period commencing Oct 1, 2006.)

Sec. 1-11. Media Coverage of Court Proceedings

(a) The broadcasting, televising, recording or photographing of court proceedings by news media will be allowed, subject to the limitations hereinafter set forth, in civil and criminal trials in the superior court.

(b) A judicial authority may permit broadcasting, televising, recording or photographing of civil and criminal trials in courtrooms of the superior court except as hereinafter excluded. As used in these rules, 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 media or pool representative seeking permission to broadcast, televise, record or photograph a civil or criminal trial shall, at least three days prior to the commencement of the trial, submit a written request to the administrative judge of the judicial district where the case is to be tried. A request submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall refer the request to the trial judge who shall approve or disapprove such request. Disapproval by the trial judge shall be final. Before the trial judge approves of such request the judge shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair trial, but the right to limit coverage at any time in the interests of the administration of justice shall be reserved to such judge. Approval of the request, however, shall not be effective unless confirmed by the administrative judge. Any news organization seeking permission to participate in a pool whose name was not submitted with the original request may, at any time, submit a separate written request to the administrative judge and shall be allowed to participate in the pool arrangement only with the approval of the trial judge.

(d) No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

(1) Family relations matters as defined in General Statutes § 46b-1;

(2) Sentencing hearings, except in trials which have been previously broadcast, televised, recorded or photographed;

(3) Trials involving trade secrets;

(4) In jury trials, all proceedings held in the absence of the jury;

(5) Trials of sexual offense charges;

(6) Trials of cases which must be closed to the public to comply with the provisions of state law.

(e) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(f) No broadcasting or recording of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(g) No juror shall be the subject of any coverage permitted under these rules. However, in courtrooms where televising or photographing is impossible without including the jury as part of the unavoidable background, the televising or photographing is permitted, but closeups which clearly identify individual jurors are prohibited.

(h) The trial judge in his or her discretion, upon the judge's own motion, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. The judge may also, at the request of a participant, prohibit in his or her discretion the broadcasting, televising, recording or photographing of that participant at the trial. The judge shall give great weight to requests where the protection of the identity of a

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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.

(i) (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. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only. Videotape recording equipment and other equipment which is not a component part of the television camera shall be located outside the courtroom.

(2) Only one still camera photographer, carrying not more than two still cameras with one lens for each camera, 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 system for televising, broadcasting and recording purposes shall be permitted in the courtroom. Audio pickup for such purposes shall be accomplished from the existing audio system in the court facility. If there is no technically suitable audio system in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the trial judge.

(j) 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.

(k) 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.

(*l*) 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.

(m) Except as provided by these rules, established restrictions upon broadcasting, televising, recording and photographing in areas adjacent to the courtrooms shall remain in full force.

(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) To evaluate prospective problems where approval for broadcasting, televising, recording or photographing of a trial has been granted, and to ensure compliance with these rules during the trial, a mandatory pretrial conference shall be held by the trial judge, attorneys and media personnel. At such conference the trial judge shall review these rules and set forth the conditions of coverage in accordance therewith.

(P.B. 1978-1997, Sec. 7C.)

Sec. 1-12. Court Opening

The sessions of the superior court will be opened at 10:00 a.m., unless otherwise ordered.

(P.B. 1978-1997, Sec. 299.)

Sec. 1-13. Recess and Adjournment

The court is ''not in session'' or ''not actually in session,'' as those phrases are used in the statutes and rules, at all times (1) after adjournment and before opening and (2) during recess. The court is in recess or in adjournment provided it has not been adjourned without date. The order for a recess or an adjournment other than without date may be revoked and the court reconvened by direction of the presiding judge at any time.

(P.B. 1978-1997, Sec. 300.)

Sec. 1-13A. Contempt

(a) Any person or court officer misbehaving or disobeying any order of a judicial authority in the course of any judicial proceeding may be adjudicated in contempt and appropriately punished.

(b) Contempt may be either criminal or civil. When criminal, it may be summary or nonsummary criminal contempt.

(Adopted June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-14. —Criminal Contempt

Conduct that is directed against the dignity and authority of the court shall be criminal contempt, and may be adjudicated summarily or nonsummarily. The sanction for a criminal contempt is punitive to vindicate the authority of the court.

(P.B. 1978-1997, Sec. 985.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

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Sec. 1-15. —Who May Be Punished

[Repealed as of Jan. 1, 2000.]

Sec. 1-16. —Summary Criminal Contempt

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

Misbehavior or misconduct in the court's presence causing an obstruction to the orderly administration of justice shall be summary criminal contempt, and may be summarily adjudicated and punished by fine or imprisonment, or both. Prior to any finding of guilt, the judicial authority shall inform the defendant of the charges against him or her and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of summary criminal contempt by presenting evidence of acquitting or mitigating circumstances. Upon an adjudication, the judicial authority shall immediately impose sentence of not more than one hundred dollars, or six months imprisonment, or both for each contumacious act. Execution of any sentence during the pendency of a trial or hearing may be deferred to the close of proceedings.

(P.B. 1978-1997, Sec. 988.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-17. —Deferral of Proceedings

The judicial authority should defer criminal contempt proceedings when: (1) the misconduct does not rise to an obstruction to the orderly administration of justice; (2) the judicial authority has become personally embroiled; (3) the misconduct did not occur in the presence of the court; and (4) the judicial authority does not instantly impose summary criminal contempt upon the commission of the contumacious act.

(P.B. 1978-1997, Sec. 989.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-18. —Nonsummary Contempt Proceedings

A criminal contempt deferred under Section 1-17 shall be prosecuted by means of an information. The judicial authority may, either upon its own order or upon the request of the prosecuting authority, issue a summons or an arrest warrant for the accused. The case shall proceed as any other criminal prosecution under these rules and the General Statutes. The sentence shall be pronounced in open court and shall not exceed six months imprisonment or a fine of five hundred dollars, or both, for each contumacious act.

(P.B. 1978-1997, Sec. 991.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-19. —Judicial Authority Disqualification in Nonsummary Contempt Proceedings

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

The trial and all related proceedings upon which nonsummary contempt proceedings are based shall be heard by a judicial authority other than the trial judge or the judicial authority who had either issued the order which was later disobeyed or deferred criminal contempt proceedings under Section 1-17.

(P.B. 1978-1997, Sec. 992.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-20. —Where No Right to Jury Trial in Nonsummary Proceeding

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

In a nonsummary contempt proceeding, if the judicial authority declares in advance of trial that the total effective sentence, if the defendant is found guilty, shall not exceed thirty days imprisonment, or a fine of ninety-nine dollars, no right to jury trial shall affix. If the total effective sentence may exceed thirty days or a fine in excess of ninety-nine dollars, the defendant shall be accorded the right to a jury trial.

(P.B. 1978-1997, Sec. 993.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-21. —Nonsummary Judgment

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

In a nonsummary contempt proceeding, the judgment file of contempt shall be prepared within a reasonable time by the clerk and shall be signed by the judicial authority and entered on the record.

(P.B. 1978-1997, Sec. 994.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-21A. —Civil Contempt

The violation of any court order qualifies for criminal contempt sanctions. Where, however, the dispute is between private litigants and the purpose for judicial intervention is remedial, then the contempt is civil, and any sanctions imposed by the judicial authority shall be coercive and nonpunitive, including fines, to ensure compliance and compensate the complainant for losses. Where the violation of a court order renders the order unenforceable, the judicial authority should consider referral for nonsummary criminal contempt proceedings.

(Adopted June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 1-22. Disqualification of Judicial Authority

(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Canon 3 (c) of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency

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of any warrant the judicial authority issued nor may the judicial authority sit in appellate review of a judgment or order originally rendered by such authority.

(b) A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority or filed a complaint against the judicial authority with the judicial review council. When the judicial authority has been made aware of the filing of such lawsuit or complaint, he or she shall so advise the attorneys and parties to the proceeding and either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision.

(P.B. 1978-1997, Sec. 996.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 1-23. Motion for Disqualification of Judicial Authority

A motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time.

(P.B. 1978-1997, Sec. 997.)

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CHAPTER 2
ATTORNEYS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 2-1. County Court Designations concerning Bar Admission Process

(a) For the purposes of this chapter, each superior court location designated below shall be the superior court for the county in which it is situated: the superior court for the judicial district of Fairfield at Bridgeport shall be the superior court for Fairfield county; the superior court for the judicial district of New Haven at New Haven shall be the superior court for New Haven county; the superior court for the judicial district of Litchfield at Litchfield shall be the superior court for Litchfield county; the superior court for the judicial district of Hartford at Hartford shall be the superior court for Hartford county; the superior court for the judicial district of Middlesex at Middletown shall be the superior court for Middlesex county; the superior court for the judicial district of Tolland at Rockville shall be the superior court for Tolland county; the superior court for the judicial district of New London at Norwich shall be the superior court for New London county; and the superior court for the judicial district of Windham at Putnam shall be the superior court for Windham county.

(b) The chief clerk for each judicial district court location mentioned above shall be the clerk for the corresponding superior court county location.

(P.B. 1978-1997, Sec. 8.) (Amended June 29, 1998, to take effect Sept. 1, 1998.)

Sec. 2-2. Admission

No person shall be admitted as an attorney except as herein provided.

(P.B. 1978-1997, Sec. 9.)

Sec. 2-3. Examining Committee

There shall be an examining committee appointed by the judges of the superior court consisting of twenty-four members, of whom at least one shall be a judge of said court, and the rest attorneys residing in this state. The term of office of each member shall be three years from the first day of September succeeding appointment, and the terms shall continue to be arranged so that those of eight members shall expire annually. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. All other vacancies shall be filled by the judges for unexpired terms only, provided that the chief justice may fill such vacancies until the next annual meeting of the judges, and in the event of the foreseen absence or the illness or the disqualification of a member of the committee the chief justice may make a pro tempore appointment to the committee to serve during such absence, illness or disqualification. At any meeting of the committee the members present shall constitute a quorum.

(P.B. 1978-1997, Sec. 11.)

Sec. 2-4. —Regulations by Examining Committee

The committee shall have the power and authority to implement these rules by regulations relevant thereto and not inconsistent therewith. Such regulations may be adopted at any regular meeting of the committee or at any special meeting called for that purpose. They shall be effective ninety days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee or by the judges of the superior court. A copy shall be mailed to the chief justice.

(P.B. 1978-1997, Sec. 12.)

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

The records and transcripts, if any, of hearings conducted by the state bar examining committee or the several standing committees on recommendations for admission to the bar shall be available only to such committee, to a judge of the superior court, to the statewide grievance committee, to disciplinary counsel or, with the consent of the applicant, to any other person, unless otherwise ordered by the court.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY—2007: This new section is taken from Section 2-50 (a) but has been amended to provide that the records and transcripts shall also be available to disciplinary counsel.

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

The committee shall further have the duty, power and authority to provide for the examination

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of candidates for admission to the bar; to determine whether such candidates are qualified as to prelaw education, legal education, morals and fitness; and to recommend to the court for admission to the bar qualified candidates.
(P.B. 1978-1997, Sec. 13.)

Sec. 2-6. —Personnel of Examining Committee

Such personnel within the legal services division of the office of the chief court administrator as may be assigned from time to time by the chief court administrator shall assist the examining committee in carrying out its duties.
(P.B. 1978-1997, Sec. 14.)

Sec. 2-7. Number of Times an Applicant May Sit for the Examination

There is no restriction on the number of times an applicant may sit for the examination.
(P.B. 1978-1997, Sec. 15A.)

Sec. 2-8. Qualifications for Admission

To entitle an applicant to admission to the bar, except under Sections 2-13 through 2-15 of these rules, the applicant must satisfy the committee that:

(1) The applicant is a citizen of the United States or an alien lawfully residing 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 and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee.

(4) The applicant has obtained a bachelor of laws or equivalent degree from a law school approved by the committee or obtained a master of laws degree for postgraduate work acceptable to the committee at a law school approved by the committee, having already obtained a bachelor of laws or equivalent degree at a law school for work acceptable to the 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 committee.

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

(8) As an alternative to satisfying the committee that the applicant has met the educational requirement of subdivision (4), of this section, 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 twenty 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 ten years during the fifteen-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 the law in Connecticut.
(P.B. 1978-1997, Sec. 16.)

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

The committee shall certify to the clerk of the superior court for the county in which the applicant seeks admission and to the clerk of the superior court in New Haven the name of any such applicant recommended by it for admission to the bar. The committee may, in light of the physical or mental disability of a candidate, recommend an applicant for admission to the bar conditional upon the applicant's compliance with conditions prescribed by the committee relevant to the disability and the fitness of the applicant. It shall also notify the applicant by mail of its decision.
(P.B. 1978-1997, Sec. 17.)

Sec. 2-10. Admission by Superior Court

(a) Each applicant who shall be recommended for admission to the bar 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 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

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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.

(P.B. 1978-1997, Sec. 18.)

Sec. 2-11. Admission by Superior Court with Conditions

(a) If pursuant to the committee's recommendation of admission with conditions as provided in Section 2-9, the court admits the person as an attorney subject to those or other conditions, the court shall as a further condition require the attorney's compliance with the conditions of admission to be monitored by the statewide bar counsel pursuant to regulations adopted by the statewide grievance committee governing such monitoring. The court may, upon application of the attorney and after receiving a report on the matter from statewide bar counsel, or upon application of statewide bar counsel, remove or modify the conditions previously imposed as circumstances warrant. All information relating to conditional admission of an applicant or attorney shall remain confidential unless otherwise ordered by the court.

(b) Upon the failure of the attorney to comply with the conditions of admission or the monitoring requirements adopted by the statewide grievance committee, the statewide bar counsel shall apply to the court in the judicial district of Hartford at Hartford for an appropriate order. The court, after hearing upon such application, may take such action as it deems appropriate. Thereafter, upon application of the attorney or of the statewide bar counsel and upon good cause shown, the court may set aside or modify the order rendered pursuant hereto.

(P.B. 1978-1997, Sec. 18A.) (Amended June 29, 1998, to take effect Sept. 1, 1998.)

Sec. 2-12. County Committees on Recommendations for Admission

(a) There shall be in each county a standing committee on recommendations for admission, consisting of not less than three nor more than seven members of the bar of that county, who shall be appointed by the judges of the superior court to hold office for three years from the date of their appointment and until their successors are appointed. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. Appointments to fill vacancies which have arisen by reasons other than revocation or suspension may be made by the chief justice until the next annual meeting of the judges of the superior court, and, in the event of the foreseen absence or the illness or the disqualification of a member of the committee, the chief justice may make a pro tempore appointment to the committee to serve during such absence, illness or disqualification.

(b) Any application for admission to the bar may be referred to the committee for the county through which the applicant seeks admission, which shall investigate the general fitness of the applicant and report to the bar of the county whether the applicant has complied with the rules relating to admission to the bar, is a person of good character and should be admitted.

(P.B. 1978-1997, Sec. 19.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, subsection (b) read: "(b) All applications for admission to the bar shall be referred to the committee for the county in which the applicant seeks admission, which shall investigate the general fitness of each applicant and report to the bar of the county whether the applicant has complied with the rules relating to admission to the bar, is a person of good character and should be admitted."

COMMENTARY—2007: The above amendment has been made because there is currently a duplication of the efforts of the County Standing Committees and the Bar Examining Committee with respect to reviewing the character and fitness of bar applicants. This duplication extends the time it takes to complete the character and fitness review process. The amendment will give the Bar Examining Committee discretion in referring such matters to the County Standing Committees.

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

Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the state bar examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut or would have entitled him or her to take the examination in Connecticut at the time of his or her admission to the bar of which he or she is a member, and that 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, shall satisfy the appropriate standing committee on recommendations for admission that he or she (1) is of good moral character and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee; (2) has

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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 and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood in such reciprocal jurisdiction for at least five of the seven 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 in such reciprocal jurisdiction for at least five of the seven 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; (3) is a citizen of the United States or an alien lawfully residing in the United States; (4) intends, upon a continuing basis, to practice law actively in Connecticut and to devote the major portion of his or her working time to the practice of law in Connecticut, may be admitted by the court as an attorney without examination upon written application and the payment of such fee as the examining 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 bar examining committee and shall set forth his or her qualifications as hereinbefore provided. There shall be filed with such application the following certificates or affidavits: Affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and supporting, to the satisfaction of the standing committee on recommendations for admission to the bar, his or her practice of law as defined under (2) of this section; 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 a certificate from the state bar examining committee that his or her educational qualifications are such as would entitle the applicant to take the examination in Connecticut or would have entitled the applicant to take the examination in Connecticut at the time of his or her admission to the bar of which the applicant is a member; and 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 state bar examining committee.

(P.B. 1978-1997, Sec. 21.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 2-14. —Action by Bar; Temporary License

Upon the filing of such application, certificates and affidavits, the administrative director of the bar examining committee shall send a copy thereof to the chair of the standing committee on recommendations for admission to the bar. When said committee shall have acted upon the application it shall notify the clerk of the superior court for the county in which the applicant seeks admission who shall give notice to every member of the bar of the county of a meeting of the bar of the county at which the report of the standing committee on recommendations upon the application will be presented. After said application is acted upon at such bar meeting, the standing committee on recommendations for admission shall file with the clerk a copy of its report, with the action of the meeting endorsed thereon. The application for admission may then be claimed for the short calendar, of which claim the clerk shall give notice to every member of the bar of the county. Such admission shall, however, be upon a temporary license for a period of one year.

(P.B. 1978-1997, Sec. 22.)

Sec. 2-15. —Permanent License

(a) Not less than thirty nor more than sixty days before the expiration of such temporary license the applicant may file a motion that such license be made permanent with the clerk, who shall forthwith give notice thereof to the standing committee on recommendations for admission. Said committee shall claim the motion for the short calendar as soon as it is prepared to make recommendations thereon to the court. If it shall appear to the court at a hearing thereon that said applicant has, since admission, devoted the major portion of his or her working time to the practice of the law in the state of Connecticut and intends to continue so to practice, and that the applicant's moral qualifications remain satisfactory, such license shall be made permanent; but if the applicant shall fail to make such motion or if the court shall upon the hearing thereon refuse to make such finding, then said temporary license shall terminate upon its expiration, but the court may for good cause shown continue said hearing and extend said license for a period of not more than three months from the original date of its expiration.

(b) Provided, however, that whenever, during the period for which such temporary license may have been issued, such licensee has entered the

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military or naval service of the United States and by reason thereof has been unable to continue in practice in Connecticut, the period between such entrance and final discharge from such service, or other termination thereof, shall not be included in computing the term of such temporary license; and upon satisfactory proof to the court hearing said motion for a permanent license of such entrance and discharge or other termination, and of compliance with the other requirements of this section, the court may make such license permanent.

(P.B. 1978-1997, Sec. 23.)

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 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 court of this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (a) 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 has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (b) 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, and 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 (c) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney has appeared pro hac vice in the state of Connecticut and (2) a member of the bar of this state must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause and of the attorney to whom such privilege is accorded. Where feasible, the application shall be made to the judge before whom such cause is likely to be tried. If not feasible, the application shall be made to the administrative judge in the judicial district where the matter is to be tried. 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, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause, 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 of such action.

(P.B. 1978-1997, Sec. 24.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

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

Upon recommendation of the bar examining committee, the court may license 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 general fitness requisite for a member of the bar of this court; and

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

(P.B. 1978-1997, Sec. 24B.)

Sec. 2-18. —Filings to Become Foreign Legal Consultant

(a) An applicant for a license to practice as a foreign legal consultant shall file with the administrative director of the bar examining committee:

(1) a typewritten application in the form prescribed by the committee;

(2) a certified check, cashier's check, or money order in the amount of $500 made payable to the bar examining committee;

(3) a certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as an attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English; and

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(4) two letters of recommendation, one from a member in good standing of the Connecticut bar and another from either a member in good standing of the bar of the country in which the applicant is licensed as an attorney, or from a judge of one of the courts of original jurisdiction of said country, together with a duly authenticated English translation of each letter if it is not in English.

(b) Upon a showing that strict compliance with the provisions of Section 2-17 (1) and subdivisions (3) or (4) of subsection (a) of this section is impossible or very difficult for reasons beyond the control of the applicant, or upon a showing of exceptional professional qualifications to practice as a foreign legal consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(c) The committee shall investigate the qualifications, moral character, and general fitness of any applicant for a license to practice as a foreign legal consultant and may in any case require the applicant to submit any additional proof or information as the committee may deem appropriate. The committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

(P.B. 1978-1997, Sec. 24C.)

Sec. 2-19. —Scope of Practice of Foreign Legal Consultants

A person licensed to practice as a foreign legal consultant under these rules is limited to advising Connecticut clients only on the law of the foreign country in which such person is admitted to practice law. Such person shall not:

(1) in any way hold himself or herself out as a member of the bar of the state of Connecticut; or

(2) use in this state any title other than "Foreign Legal Consultant," but in conjunction therewith may indicate the foreign country in which he or she is licensed to practice law.

(P.B. 1978-1997, Sec. 24D.)

Sec. 2-20. —Disciplinary Provisions regarding Foreign Legal Consultants

(a) Every person licensed to practice as a foreign legal consultant under these rules:

(1) shall be subject to the Connecticut Rules of Professional Conduct and to the rules of practice regulating the conduct of attorneys in this state to the extent applicable to the legal services authorized under these rules, and shall be subject to reprimand, suspension, or revocation of license to practice as a foreign legal consultant by the court;

(2) shall execute and file with the clerk, in such form and manner as the court may prescribe:

(A) a written commitment to observe the Connecticut Rules of Professional Conduct and other rules regulating the conduct of attorneys as referred to in subsection (a) (1) of this section,

(B) an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure the foreign legal consultant's proper professional conduct and responsibility,

(C) a duly acknowledged instrument in writing setting forth the foreign legal consultant's address in the state of Connecticut or United States, and designating the clerk of the superior court for the judicial district of Hartford at Hartford as his or her agent upon whom process may be served. Such service shall have the same effect as if made personally upon the foreign legal consultant, in any action or proceeding thereafter brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of the state of Connecticut, and

(3) a written commitment to notify the clerk of the foreign legal consultant's resignation from practice in the foreign country of his or her admission or in any other state or jurisdiction in which said person has been admitted to practice law, or of any censure, reprimand, suspension, revocation or other disciplinary action relating to his or her right to practice in such country, state or jurisdiction.

(b) Service of process on the clerk pursuant to the designation filed as aforesaid shall be made by personally delivering to and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, at the clerk's office, duplicate copies of such process together with a fee of $20. Service of process shall be complete when the clerk has been so served. The clerk shall promptly send one of the copies to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the address given to the court by the foreign legal consultant as aforesaid.

(c) In imposing any sanction authorized by subsection (a) (1), the court may act sua sponte or on the recommendation of the statewide grievance committee. To the extent feasible, the court shall proceed in a manner consistent with the rules of practice governing discipline of the bar of the state of Connecticut.

(P.B. 1978-1997, Sec. 24E.) (Amended June 29, 1998, to take effect Sept. 1, 1998.)

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Sec. 2-21. —Affiliation of Foreign Legal Consultant with the Bar of the State of Connecticut

(a) A foreign legal consultant licensed under these rules shall not be a member of the Connecticut bar, provided, however, that a foreign legal consultant shall be considered an affiliate of the bar subject to the same conditions and requirements as are applicable to an active or inactive member of the bar under the court's rules governing the bar of the state of Connecticut, insofar as such conditions and requirements may be consistent with the provisions of these rules.

(b) A foreign legal consultant licensed under these rules shall, upon being so licensed, take the following oath before this court, unless granted permission to take the oath in absentia:

"I, _____, do solemnly swear (or affirm) that as a foreign legal consultant with respect to the laws of _____, licensed by this court, I will conduct myself uprightly and according to the laws of the State of Connecticut and the rules of the court."

(P.B. 1978-1997, Sec. 24F.)

Sec. 2-22. Disposition of Fees for Admission to the Bar

(a) All fees paid under the preceding sections of these rules shall be transmitted to the treasurer of the bar examining committee. Such fees, together with any interest earned thereon, shall be applied to the payment of the necessary and reasonable expenses incurred by the bar examining committee, the standing committees on recommendations for admission in the several counties and the staff assigned by the chief court administrator pursuant to Section 2-6, and to the salaries and benefits of such staff. Such reasonable expenses shall not include charges for telephone and office space utilized by such staff in the performance of their duties. Expenses shall not be paid except upon authorization of the chair of the bar examining committee, or the chair's designee. The bar examining committee and the county standing committees shall follow such established judicial branch guidelines, directives and policies with regard to fiscal, personnel and purchasing matters as deemed by the chief court administrator to be applicable to them. Surplus moneys may, with the approval of the committee, be turned over from time to time to the executive secretary of the judicial branch for deposit as court revenue in the general fund of the state of Connecticut.

(b) The bar examining committee, when necessary, shall contract with individuals to serve as proctors and with attorneys to serve as bar examination graders and with law school faculty and other qualified persons to provide bar examination essay questions and shall establish an appropriate fee schedule for such services.

(P.B. 1978-1997, Sec. 25.)

Sec. 2-23. Roll of Attorneys

(a) The statewide bar counsel shall forward to the clerk for Hartford county for certification a roll of the attorneys of the state and the said clerk shall keep said roll. The clerk for any other county in which an attorney is admitted shall forthwith certify such action, with the date and the residence of the attorney, to the clerk for Hartford county, the statewide bar counsel and the administrative director of the bar examining committee.

(b) The clerk for any county in which an attorney is suspended, disbarred, resigned, placed in an inactive status, reinstated, or otherwise formally and publicly disciplined by the court shall forthwith certify such action with the date, the residence of the attorney and a certified copy of the court order to the statewide bar counsel and to the clerk for Hartford county, and shall notify them of the death of any attorney in his or her county of which such clerk knows.

(c) The clerk for Hartford county shall forthwith notify the clerks of the superior court and the clerk of the United States district court for the district of Connecticut, at New Haven, of all suspensions, disbarments, resignations, placements in inactive status, retirements, revocations of retirements, or reinstatements.

(P.B. 1978-1997, Sec. 26.)

Sec. 2-24. Notice by Attorney of Admission in Other Jurisdictions

An attorney who is admitted to practice at the bar of another state, the District of Columbia, or the commonwealth of Puerto Rico, or of any United States court, shall send to the Connecticut statewide bar counsel written notice of all such jurisdictions in which he or she is admitted to practice within thirty days of admission to practice in such jurisdiction.

(P.B. 1978-1997, Sec. 26A.)

Sec. 2-25. Notice by Attorney of Disciplinary Action in Other Jurisdictions

An attorney shall send to the statewide bar counsel written notice of all disciplinary actions imposed by the courts of another state, the District of Columbia, or the commonwealth of Puerto Rico, or of any United States court, within thirty days of the order directing the disciplinary action.

(P.B. 1978-1997, Sec. 26B.)

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Sec. 2-26. Notice by Attorney of Change in Address

An attorney shall send prompt written notice of a change in mailing and street address to the statewide grievance committee on a registration form approved by the statewide bar counsel and to the clerks of the courts where the attorney has entered an appearance.

(P.B. 1978-1997, Sec. 27.)

Sec. 2-27. Clients' Funds

(Effective through June 30, 2007.)

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct each lawyer or law firm shall maintain, separate from the lawyer's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the lawyer or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each lawyer or law firm maintaining one or more trust accounts as defined in Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the lawyer or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each lawyer or law firm shall retain the records required under this section for a period of seven years after final distribution of such funds or any portion thereof. Specifically, each lawyer or law firm shall maintain the following in connection with each such trust account:

(1) a receipt and disbursement journal identifying all deposits in and withdrawals from the account and showing the running account balance;

(2) a separate accounting page or column for each client or third person for whom funds are held showing (A) all receipts and disbursements and (B) a running account balance;

(3) at least quarterly a written reconciliation of trust account journals, client ledgers and bank statements;

(4) a list identifying all trust accounts as defined in Section 2-28 (b); and

(5) all checkbooks, bank statements, and canceled or voided checks.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to subsection (b) of this section, 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 lawyer shall register with statewide grievance committee, on a form devised by the committee, the address of the lawyer's office or offices maintained for the practice of law and the name and address of the financial institution with which the lawyer 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 lawyer changes his or her address or addresses or location or identification number of any such trust account in which the funds of more that one client are kept. 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) Violation of this section shall constitute misconduct.

(P.B. 1978-1997, Sec. 27A.)

Sec. 2-27. Clients' Funds

(Effective July 1, 2007.)

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct each lawyer or law firm shall maintain, separate from the lawyer's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the lawyer or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each lawyer or law firm maintaining one or more trust accounts as defined in Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the lawyer or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each lawyer or law firm shall retain the records required under this section for a period of seven years after final distribution of such funds or any portion thereof. Specifically, each lawyer or law firm shall maintain the following in connection with each such trust account:

(1) a receipt and disbursement journal identifying all deposits in and withdrawals from the account and showing the running account balance;

(2) a separate accounting page or column for each client or third person for whom funds are held showing (A) all receipts and disbursements and (B) a running account balance;

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(3) at least quarterly a written reconciliation of trust account journals, client ledgers and bank statements;

(4) a list identifying all trust accounts as defined in Section 2-28 (b); and

(5) all checkbooks, bank statements, and canceled or voided checks.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to subsection (b) of this section, 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 lawyer shall register with the statewide grievance committee, on a form devised by the committee, the address of the lawyer's office or offices maintained for the practice of law and the name and address of the financial institution with which the lawyer 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 lawyer 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. 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 subsection (b) of this section to determine whether such accounts are in compliance with this section and Rule 1.15 of the Rules of Professional Conduct. 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 lawyer 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 discipline is imposed by the statewide grievance committee or a reviewing committee for violations of said rule or this section. Prior to the commencement of a presentment or a hearing held pursuant to Section 2-35 (c), 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 at a presentment or hearing held pursuant to Section 2-35 (c) shall be subject to the client or third person having the reasonable opportunity to seek a court order restricting publication of any such records disclosing confidential information.

(f) Violation of this section shall constitute misconduct.

(P.B. 1978-1997, Sec. 27A.) (Amended June 25, 2001, to take effect Jan. 1, 2002; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007; July 1, 2007.)

HISTORY—2007: Prior to 2007, subsection (c) read: "Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to subsection (b) of this section, shall be made available upon request of the statewide grievance committee or its counsel for review and audit upon a finding by the statewide grievance committee or a grievance panel that there exists probable cause that the lawyer or law firm is guilty of misconduct."

Effective July 1, 2007, the current subsection (e) was added and what had been subsection (e) became subsection (f).

COMMENTARY—2007: The above change to subsection (c) will allow the statewide bar counsel and disciplinary counsel to react quickly in cases of unexplained or inadequately explained overdrafts.

Subsection (e) will permit random audits of trust accounts maintained by attorneys.

Sec. 2-28. Overdraft Notification

(a) The terms used in this section are defined as follows:

(1) "Financial institution" includes banks, savings and loan associations, credit unions, savings banks and any other business or person which accepts for deposit funds held in trust by attorneys.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under law.

(3) "Insufficient funds" refers to the status of an account that does not contain sufficient funds available to pay a properly payable instrument.

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(4) ''Uncollected funds'' refers to funds deposited in an account and available to be drawn upon but not yet deemed by the financial institution to have been collected.

(b) Attorneys shall deposit all funds held in any fiduciary capacity in accounts clearly identified as ''trust,'' ''client funds'' or ''escrow'' accounts, referred to herein as ''trust accounts,'' and shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation in Connecticut, whether as trustee, agent, guardian, executor or otherwise. Where an attorney fiduciary has the right to draw by a properly payable instrument on such trust account in which the funds of more than one client are kept, such account shall be maintained only in financial institutions approved by the statewide grievance committee. No such trust account in which the funds of more than one client are kept shall be maintained in any financial institution in Connecticut which does not file the agreement required by this section. Violation of this subsection shall constitute misconduct.

(c) Attorneys regularly maintaining funds in a fiduciary capacity shall register any account in which the funds of more than one client are kept with the statewide grievance committee in accordance with Section 2-27 (d).

(d) A financial institution shall be approved as a depository for attorney trust accounts only if it files with the statewide grievance committee an agreement, in a form provided by the committee, to report to the committee the fact that an instrument has been presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No report shall be required if funds in an amount sufficient to cover the deficiency in the trust account are deposited within one business day of the presentation of the instrument. No report shall be required in the case of an instrument presented and paid against uncollected funds.

(e) Any such agreement shall not be cancelled by a financial institution except upon thirty days written notice to the statewide grievance committee. The statewide grievance committee shall establish rules governing approval and termination of approved status for financial institutions, and shall publish annually a list of approved institutions. Any such agreement shall apply to all branches of the financial institution in Connecticut and shall not be cancelled except upon thirty days notice in writing to the statewide grievance committee.

(f) The financial institution shall report to the statewide grievance committee within seven business days from the date of such presentation, any instrument presented against insufficient funds on any trust funds account unless funds in an amount sufficient to cover the deficiency in the account are deposited within one business day of the presentation of the instrument. The report shall be accompanied by a copy of the instrument.

(g) The statewide grievance committee may delegate to the statewide bar counsel the authority to investigate overdraft notifications and determine that no misconduct has occurred or that no further action is warranted. Any determination that misconduct may have occurred and a grievance complaint should be initiated, unless such complaint is premised upon the failure of an attorney to file an explanation of an overdraft, shall be made by the statewide grievance committee.

(h) Upon receipt of notification of an overdraft, the statewide grievance committee, its counsel or disciplinary counsel may request that the attorney produce such books of account and statements of reconciliation, and any other records required to be maintained pursuant to Section 2-27 (b) for review, examination or audit. Failure of the attorney to respond to inquiries of the statewide grievance committee, its counsel, or disciplinary counsel, or to produce the requested books of account and statements of reconciliation or other records shall be grounds for disciplinary counsel to file an application for an interim suspension in accordance with the provisions of Section 2-42.

(i) Every attorney practicing or admitted to practice in Connecticut shall, as a condition thereof, be conclusively presumed to have authorized the reporting and production requirements of this section. Where an attorney qualifies as executor of a will or as trustee or successor fiduciary, the attorney fiduciary shall have a reasonable time after qualification to bring preexisting trust accounts into compliance with the provisions of this section.

(P.B. 1978-1997, Sec. 27A.1.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the phrase ''on any trust funds account'' was added to the first sentence of subsection (f), after the words ''any instrument presented against insufficient funds.'' The word ''trust'' was deleted from the first sentence before the word ''account.'' The current subsection (h) was added in 2007, and what had been subsection (h) became subsection (i).

COMMENTARY—2007: The above changes will allow the statewide bar counsel and disciplinary counsel to react quickly in cases of unexplained or inadequately explained overdrafts.

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Sec. 2-28A. Attorney Advertising; Mandatory Filing

(Effective July 1, 2007.)

(a) Any attorney who advertises services to the public through any media, electronic or otherwise, or through written or recorded communication pursuant to Rule 7.2 of the Rules of Professional Conduct shall file a copy of each such advertisement or communication with the statewide grievance committee either prior to or concurrently with the attorney's first dissemination of the advertisement or written or recorded communication, except as otherwise provided in subsection (b) herein. The materials shall be filed in a format prescribed by the statewide grievance committee, which may require them to be filed electronically. Any such submission in a foreign language must include an accurate English language translation. The filing shall consist of the following:

(1) A copy of the advertisement or communication in the form or forms in which it is to be disseminated (e.g., videotapes, DVDs, audiotapes, compact disks, print media, photographs of outdoor advertising);

(2) A transcript, if the advertisement or communication is in video or audio format;

(3) A list of domain names used by the attorney, which shall be updated quarterly;

(4) A sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(5) A statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used.

(b) The filing requirements of subsection (a) do not extend to any of the following materials:

(1) An advertisement in the public media that contains only the information, in whole or in part, contained in Rule 7.2 (i) of the Rules of Professional Conduct, provided the information is not false or misleading;

(2) An advertisement in a telephone directory;

(3) A listing or entry in a regularly published law list;

(4) An announcement card stating new or changed associations, new offices, or similar changes relating to an attorney or firm, or a tombstone professional card;

(5) A communication sent only to:

(i) Existing or former clients;

(ii) Other attorneys or professionals; business organizations including trade groups; not-for-profit organizations; governmental bodies and/or

(iii) Members of a not-for-profit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by an attorney; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the attorney who is recommended, furnished, or paid for by the organization.

(6) Communication that is requested by a prospective client.

(7) The contents of an attorney's internet website that appears under any of the domain names submitted pursuant to subparagraph (3) of subsection (a).

(c) If requested by the statewide grievance committee, an attorney shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written or recorded communications.

(d) The statewide bar counsel shall review advertisements and communications filed pursuant to this section that have been selected for such review on a random basis. If after such review the statewide bar counsel determines that an advertisement or communication does not comply with the Rules of Professional Conduct, the statewide bar counsel shall in writing advise the attorney responsible for the advertisement or communication of the noncompliance and shall attempt to resolve the matter with such attorney. If the matter is not resolved to the satisfaction of the statewide bar counsel, he or she shall forward the advertisement or communication and a statement describing the attempt to resolve the matter to the statewide grievance committee for review. If, after reviewing the advertisement or communication, the statewide grievance committee determines that it violates the Rules of Professional Conduct, it shall forward a copy of its file to the disciplinary counsel and direct the disciplinary counsel to file a presentment against the attorney in the superior court.

(e) The procedure set forth in subsection (d) shall apply only to advertisements and communications that are reviewed as part of the random review process. If an advertisement or communication comes to the attention of the statewide bar counsel other than through that process, it shall be handled pursuant to the grievance procedure that is set forth in Sections 2-29 et seq.

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(f) The materials required to be filed by this section shall be retained by the statewide grievance committee for a period of one year from the date of their filing, unless, at the expiration of the one year period, there is pending before the statewide grievance committee, a reviewing committee, or the court a proceeding concerning such materials, in which case the materials that are the subject of the proceeding shall be retained until the expiration of the proceeding or for such other period as may be prescribed by the statewide grievance committee.

(g) Except for records filed in court in connection with a presentment brought pursuant to subsection (d), records maintained by the statewide bar counsel, the statewide grievance committee and/or the disciplinary counsel's office pursuant to this section shall not be public. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding and such records shall be available in such proceedings to a judge of the superior court or to the standing committee on recommendations for admission to the bar, to disciplinary counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

(h) Violation of subsections (a) or (c) shall constitute misconduct.

(Adopted June 26, 2006, to take effect July 1, 2007.)

COMMENTARY—2007: This section is intended to enhance the ability of the statewide grievance committee to monitor attorneys' advertising practices and to provide a procedure for enforcing compliance with the Rules of Professional Conduct for the protection of the public.

In subsection (a) (3) ''quarterly'' means the first business day of January, April, July and October.

Sec. 2-28B. —Advisory Opinions

(Effective July 1, 2007.)

(a) An attorney who desires to secure an advance advisory opinion concerning compliance with the Rules of Professional Conduct of a contemplated advertisement or communication may submit to the statewide grievance committee, not less than 30 days prior to the date of first dissemination, the material specified in Section 2-28A (a) accompanied by a fee established by the Chief Court Administrator. It shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement.

(b) An advisory opinion shall be issued, without a hearing, by the statewide grievance committee or by a reviewing committee assigned by the statewide grievance committee. Such reviewing committee shall consist of at least three members of the statewide grievance committee, at least one-third of whom are not attorneys.

(c) An advisory opinion issued by the statewide grievance committee or a reviewing committee finding noncompliance with the Rules of Professional Conduct is not binding in a disciplinary proceeding, but a finding of compliance is binding in favor of the submitting attorney in a disciplinary proceeding if the representations, statements, materials, facts and written assurances received in connection therewith are not false or misleading. The finding constitutes admissible evidence if offered by a party. If a request for an advisory opinion is made within 60 days of the effective date of this section, the statewide grievance committee or reviewing committee shall issue its advisory opinion within 45 days of the filing of the request. Thereafter, the statewide grievance committee or reviewing committee shall issue its advisory opinion within 30 days of the filing of the request. For purposes of this section, an advisory opinion is issued on the date notice of the opinion is transmitted to the attorney who requested it pursuant to subsection (a) herein.

(d) If requested by the statewide grievance committee or a reviewing committee, the attorney seeking an advisory opinion shall promptly submit information to substantiate statements or representations made or implied in such attorney's advertisement. The time period set forth in subsection (c) herein shall be tolled from the date of the committee's request to the date the requested information is filed with the committee.

(e) If an advisory opinion is not issued by the statewide grievance committee or a reviewing committee within the time prescribed in this section, the advertisement or communication for which the opinion was sought shall be deemed to be in compliance with the Rules of Professional Conduct.

(f) If, after receiving an advisory opinion finding that an advertisement or communication violates the Rules of Professional Conduct, the attorney disseminates such advertisement or communication, the statewide grievance committee, upon receiving notice of such dissemination, shall forward a copy of its file concerning the matter to the disciplinary counsel and direct the disciplinary counsel to file a presentment against the attorney in the superior court.

(g) Except for advisory opinions, all records maintained by the statewide grievance committee

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pursuant to this section shall not be public. Advisory opinions issued pursuant to this section shall not be public for a period of 30 days from the date of their issuance. During that 30 day period the advisory opinion shall be available only to the attorney who requested it pursuant to subsection (a), to the statewide grievance committee or its counsel, to reviewing committees, to grievance panels, to disciplinary counsel, to a judge of the superior court, and, with the consent of the attorney who requested the opinion, to any other person. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding and such records shall be available in such proceedings to a judge of the superior court or to the standing committee on recommendations for admission to the bar, to disciplinary counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

(Adopted June 26, 2006, to take effect July 1, 2007.)

COMMENTARY—2007: This section gives attorneys the option of obtaining an advisory opinion concerning whether their advertisement conforms to the requirements of the Rules of Professional Conduct prior to disseminating the advertisement. An advisory opinion that finds that the advertisement complies with the Rules will be binding in favor of the submitting attorney in a disciplinary proceeding provided the statements, representations and materials submitted in connection with the advertisement are not false or misleading.

Sec. 2-29. Grievance Panels

(a) The judges of the superior court shall appoint one or more grievance panels in each judicial district, each consisting of two members of the bar who do not maintain an office for the practice of law in such judicial district and one nonattorney who resides in such judicial district, and shall designate as an alternate member a member of the bar who does not maintain an office for the practice of law in such judicial district. Terms shall commence on July 1. Appointments shall be for terms of three years. No person may serve as a member and/or as an alternate member for more than two consecutive three year terms, but may be reappointed after a lapse of one year. The appointment of any member or alternate member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the balance of the term or for any other appropriate period. In the event that a vacancy arises on a panel before the end of a term by reasons other than revocation or suspension, the executive committee of the superior court shall appoint an attorney or nonattorney, depending on the position vacated, who meets the appropriate condition set forth above to fill the vacancy for the balance of the term.

(b) Consideration for appointment to these positions shall be given to those candidates recommended to the appointing authority by the administrative judges.

(c) In the event that more than one panel has been appointed to serve a particular judicial district, the executive committee of the superior court shall establish the jurisdiction of each such panel.

(d) An attorney who maintains an office for the practice of law in the same judicial district as a respondent may not participate as a member of a grievance panel concerning a complaint against that respondent.

(e) In addition to any other powers and duties set forth in this chapter, each panel shall:

(1) On its own motion or on complaint of any person, inquire into and investigate offenses whether or not occurring in the actual presence of the court involving the character, integrity, professional standing and conduct of members of the bar in this state.

(2) Compel any person by subpoena to appear before it to testify in relation to any matter deemed by the panel to be relevant to any inquiry or investigation it is conducting and to produce before it for examination any books or papers which, in its judgment, may be relevant to such inquiry or investigation.

(3) Utilize a court reporter or court recording monitor employed by the judicial branch to record any testimony taken before it.

(f) The grievance panel may, upon the vote of a majority of its members, require that a disciplinary counsel pursue the matter before the grievance panel on the issue of probable cause.

(P.B. 1978-1997, Sec. 27B.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-30. Grievance Counsel for Panels and Investigators

(a) The judges of the superior court shall appoint, as set forth below, attorneys to serve either on a part-time or full-time basis as grievance counsel for grievance panels, and shall appoint one or more investigators either on a full-time or part-time basis. The investigators so appointed shall serve the statewide grievance committee, the reviewing committees and the grievance panels and shall be under the supervision of the statewide bar counsel. These appointments shall be for a term of one year commencing July 1. In the event that a vacancy arises in any of these positions before the end of a term, the executive

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committee of the superior court shall appoint a qualified individual to fill the vacancy for the balance of the term. Compensation for these positions shall be paid by the judicial branch. Such appointees may be placed on the judicial branch payroll or be paid on a contractual basis.

(b) Consideration for appointment to the position of grievance counsel for a grievance panel shall be given to those candidates recommended to the appointing authority by the resident judges in the judicial district or districts to which the appointment is to be made.

(c) The executive committee of the superior court shall determine the number of grievance counsel to serve one or more grievance panels.

(P.B. 1978-1997, Sec. 27D.)

Sec. 2-31. Powers and Duties of Grievance Counsel

Grievance counsel shall have the following powers and duties:

(1) Upon referral of the complaint to the grievance panel, to confer with and, if possible, meet with the complainants and assist them in understanding the grievance process set forth in these rules and to answer questions complainants may have concerning that process.

(2) To investigate all complaints received by the grievance panel from the statewide bar counsel involving alleged misconduct of an attorney subject to the jurisdiction of the superior court.

(3) To assist the grievance panels in carrying out their duties under this chapter.

(4) When determined to be necessary by the statewide grievance committee, to assist reviewing committees of the statewide grievance committee in conducting hearings before said reviewing committees.

(5) If the grievance panel has dismissed the complaint, to assist the complainant in understanding the reasons for the dismissal.

(P.B. 1978-1997, Sec. 27E.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-32. Filing Complaints against Attorneys; Action; Time Limitation

(a) Any person, including disciplinary counsel, or a grievance panel on its own motion, may file a written complaint, executed under penalties of false statement, alleging attorney misconduct whether or not such alleged misconduct occurred in the actual presence of the court. Complaints against attorneys shall be filed with the statewide bar counsel. Within seven days of the receipt of a complaint the statewide bar counsel shall review the complaint and process it in accordance with subdivisions (1), (2) or (3) of this subsection as follows:

(1) forward the complaint to a grievance panel in the judicial district in which the respondent maintains his or her principal office or residence, provided that, if the respondent does not maintain such an address in this state, the statewide bar counsel shall forward the complaint to any grievance panel; and notify the complainant and the respondent, by certified mail with return receipt, of the panel to which the complaint was sent. The notification to the respondent shall be accompanied by a copy of the complaint. The respondent shall respond within thirty days of the date notification is mailed to the respondent unless for good cause shown such time is extended by the grievance panel. The response shall be sent to the grievance panel to which the complaint has been referred. The failure to file a timely response shall constitute misconduct unless the respondent establishes that the failure to respond timely was for good cause shown;

(2) refer the complaint to the chair of the statewide grievance committee or an attorney designee of the chair and to a nonattorney member of the committee, and the statewide bar counsel in conjunction with the chair or attorney designee and the nonattorney member, shall if deemed appropriate, dismiss the complaint on one or more of the following grounds:

(A) the complaint only alleges a fee dispute and not a clearly excessive or improper fee;

(B) the complaint does not allege facts which, if true, would constitute a violation of any provision of the applicable rules governing attorney conduct;

(C) the complaint does not contain sufficient specific allegations on which to conduct an investigation;

(D) the complaint is duplicative of a previously adjudicated complaint;

(E) the complaint alleges that the last act or omission constituting the alleged misconduct occurred more than six years prior to the date on which the complaint was filed;

(i) Notwithstanding the period of limitation set forth in this subparagraph, an allegation of misconduct that would constitute a violation of Rule 1.15, 8.1 or 8.4 (2) through (6) of the Rules of Professional Conduct may still be considered as long as a written complaint is filed within one year of the discovery of such alleged misconduct.

(ii) Each period of limitation in this subparagraph is tolled during any period in which: (1) the alleged misconduct remains undiscovered due to active concealment; (2) the alleged misconduct would constitute a violation of Rule 1.8 (c) and

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the conditions precedent of the instrument have not been satisfied; (3) the alleged misconduct is part of a continuing course of misconduct; or (4) the aggrieved party is under the age of majority, insane, or otherwise unable to file a complaint due to mental or physical incapacitation.

(F) the complaint alleges misconduct occurring in a superior court, appellate court or supreme court action and the court has been made aware of the allegations of misconduct and has rendered a decision finding misconduct or finding that either no misconduct has occurred or that the allegations should not be referred to the statewide grievance committee;

(G) the complaint alleges personal behavior outside the practice of law which does not constitute a violation of the Rules of Professional Conduct;

(H) the complaint alleges the nonpayment of incurred indebtedness;

(I) the complaint names only a law firm or other entity and not any individual attorney, unless dismissal would result in gross injustice. If the complaint names a law firm or other entity as well as an individual attorney or attorneys, the complaint shall be dismissed only as against the law firm or entity;

(J) the complaint alleges misconduct occurring in another jurisdiction in which the attorney is also admitted and in which the attorney maintains an office to practice law, and it would be more practicable for the matter to be determined in the other jurisdiction. If a complaint is dismissed pursuant to this subdivision, it shall be without prejudice and the matter shall be referred by the statewide bar counsel to the jurisdiction in which the conduct is alleged to have occurred.

(3) If a complaint alleges only a fee dispute within the meaning of subsection (a) (2) (A) of this section, the statewide bar counsel in conjunction with the chairperson or attorney designee and the nonattorney member may stay further proceedings on the complaint on such terms and conditions deemed appropriate, including referring the parties to fee arbitration. The record and result of any such fee arbitration shall be filed with the statewide bar counsel and shall be dispositive of the complaint. A party who refuses to utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(b) The statewide bar counsel, chair or attorney designee and nonattorney member shall have fourteen days from the date the complaint was filed to determine whether to dismiss the complaint. If after review by the statewide bar counsel, chair or attorney designee and nonattorney member it is determined that the complaint should be forwarded to a grievance panel for investigation in accordance with subsections (f) through (j) of this section, the complaint shall be so forwarded in accordance with subsection (a) (1) of this section within seven days of the determination to forward the complaint.

(c) If the complaint is dismissed by the statewide bar counsel in conjunction with the chair or attorney designee and nonattorney member, the complainant and respondent shall be notified of the dismissal in writing. The respondent shall be provided with a copy of the complaint with the notice of dismissal. The notice of dismissal shall set forth the reason or reasons for the dismissal. The complainant shall have fourteen days from the date notice of the dismissal is mailed to the complainant to file an appeal of the dismissal. The appeal shall be in writing setting forth the basis of the appeal and shall be filed with the statewide bar counsel who shall forward it to a reviewing committee for decision on the appeal. The reviewing committee shall review the appeal and render a decision thereon within sixty days of the filing of the appeal. The reviewing committee shall either affirm the dismissal of the complaint or order the complaint forwarded to a grievance panel for investigation in accordance with subsections (f) through (j) of this section. The decision of the reviewing committee shall be in writing and mailed to the complainant. The decision of the reviewing committee shall be final.

(d) The statewide bar counsel shall keep a record of all complaints filed. The complainant and the respondent shall notify the statewide bar counsel of any change of address or telephone number during the pendency of the proceedings on the complaint.

(e) If for good cause a grievance panel declines, or is unable pursuant to Section 2-29 (d), to investigate a complaint, it shall forthwith return the complaint to the statewide bar counsel to be referred by him or her immediately to another panel. Notification of such referral shall be given by the statewide bar counsel to the complainant and the respondent by certified mail with return receipt.

(f) The grievance panel, with the assistance of the grievance counsel assigned to it, shall investigate each complaint to determine whether probable cause exists that the attorney is guilty of misconduct. The grievance panel may, upon the vote of a majority of its members, require that a disciplinary counsel pursue the matter before the grievance panel on the issue of probable cause.

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(g) Investigations and proceedings of the grievance panel shall be confidential unless the attorney under investigation requests that such investigation and proceedings be public.

(h) On the request of the respondent and for good cause shown, or on its own motion, the grievance panel may conduct a hearing on the complaint. The complainant and respondent shall be entitled to be present at any proceedings on the complaint at which testimony is given and to have counsel present, provided, however, that they shall not be entitled to examine or cross-examine witnesses unless requested by the grievance panel.

(i) The panel shall, within one hundred and ten days from the date the complaint was referred to it, unless such time is extended pursuant to subsection (j), do one of the following: (1) If the panel determines that probable cause exists that the respondent is guilty of misconduct, it shall file the following with the statewide grievance committee and with the disciplinary counsel: (A) its written determination that probable cause exists that the respondent is guilty of misconduct, (B) a copy of the complaint and response, (C) a transcript of any testimony heard by the panel, (D) a copy of any investigatory file and copies of any documents, transcripts or other written materials which were available to the panel. These materials shall constitute the panel's record in the case. (2) If the panel determines that no probable cause exists that the respondent is guilty of misconduct, it shall dismiss the complaint unless there is an allegation in the complaint that the respondent committed a crime. Such dismissal shall be final and there shall be no review of the matter by the statewide grievance committee, but the panel shall file with the statewide grievance committee a copy of its decision dismissing the complaint and the materials set forth in subsection (i) (1) (B), (C) and (D). In cases in which there is an allegation in the complaint that the respondent committed a crime, the panel shall file with the statewide grievance committee and with disciplinary counsel its written determination that no probable cause exists and the materials set forth in subsection (i) (1) (B), (C) and (D). These materials shall constitute the panel's record in the case.

(j) The panel may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which may grant the motion only upon a finding of good cause. If the panel does not complete its action on a complaint within the time provided in this section, the statewide grievance committee shall inquire into the delay and shall order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the statewide grievance committee. The panel shall not make a probable cause determination based, in full or in part, on a claim of misconduct not alleged in the complaint without first notifying the respondent that it is considering such action and affording the respondent the opportunity to be heard.

(k) The panel shall notify the complainant, the respondent, and the statewide grievance committee of its determination. The determination shall be a matter of public record.

(P.B. 1978-1997, Sec. 27F.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; amended June 30, 2003, to take effect Oct. 1, 2003; Sept. 30, 2003, effective date of two latest amendments changed to Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 2-33. Statewide Grievance Committee

(a) The judges of the superior court shall appoint twenty-one persons to a committee to be known as the "statewide grievance committee." At least seven shall not be attorneys and the remainder shall be members of the bar of this state. The judges shall designate one member as chair and another as vice-chair to act in the absence or disability of the chair.

(b) All members shall serve for a term of three years commencing on July 1. Except as otherwise provided herein, no person shall serve as a member for more than two consecutive three year terms, excluding any appointments for less than a full term; a member may be reappointed after a lapse of one year. If the term of a member who is on a reviewing committee expires while a complaint is pending before that committee, the judges or the executive committee may extend the term of such member to such time as the reviewing committee has completed its action on that complaint. In the event of such an extension the total number of statewide grievance committee members may exceed twenty-one. The appointment of any member may be revoked or suspended by the judges or by the executive committee of the superior court. In connection with such revocation or suspension, the judges or the executive committee shall appoint a qualified individual to fill the vacancy for the remainder of the term or for any other appropriate period. In the event that a vacancy arises in this position before the end of a term by reasons other than revocation or suspension, the executive committee of the superior court shall fill the vacancy for the balance of the term or for any other appropriate period.

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Unless otherwise provided in this chapter, the committee must have at least a quorum present to act, and a quorum shall be eleven. The committee shall act by a vote of a majority of those present and voting, provided that a minimum of six votes for a particular action is necessary for the committee to act. Members present but not voting due to disqualification, abstention, silence or a refusal to vote, shall be counted for purposes of establishing a quorum, but not counted in calculating a majority of those present and voting.

(c) In addition to any other powers and duties set forth in this chapter, the statewide grievance committee shall:

(1) Institute complaints involving violations of General Statutes § 51-88.

(2) Adopt rules to carry out its duties under this chapter which are not inconsistent with these rules.

(3) Adopt rules for grievance panels to carry out their duties under this chapter which are not inconsistent with these rules.

(4) In its discretion, disclose that it or the statewide bar counsel has referred a complaint to a panel for investigation when such disclosure is deemed by the committee to be in the public interest.

(P.B. 1978-1997, Sec. 27G.)

Sec. 2-34. Statewide Bar Counsel

(a) The judges of the superior court shall appoint an attorney to act as statewide bar counsel, and such additional attorneys to act as assistant bar counsel as are necessary, for a term of one year commencing July 1. In the event that a vacancy arises in any such position before the end of a term, the executive committee of the superior court shall appoint an attorney to fill the vacancy for the balance of the term. Compensation for these positions shall be paid by the judicial branch. Such individuals shall be in the legal services division of the office of the chief court administrator and shall perform such other duties as may be assigned to them in that capacity.

(b) In addition to any other powers and duties set forth in this chapter, the statewide bar counsel or an assistant bar counsel shall:

(1) Report to the national disciplinary data bank such requested information as is officially reported to the statewide bar counsel concerning attorneys who have resigned pursuant to Section 2-52, or whose unethical conduct has resulted in disciplinary action by the court or by the statewide grievance committee, or who have been placed on inactive status pursuant to Sections 2-56 through 2-62.

(2) Receive and maintain information forwarded to the statewide bar counsel by the national disciplinary data bank.

(3) Receive and maintain records forwarded to the statewide bar counsel by the clerks of court pursuant to Sections 2-23 and 2-52 and by complainants pursuant to Section 2-32.

(4) Certify to the status of individuals who are or were members of the bar of this state at the request of bar admission authorities of other jurisdictions or at the request of a member of the bar of this state with respect to such member's status. In certifying to the status of an individual, no information shall be provided to the requesting entity, other than public information, without a waiver from that individual.

(5) Assist the statewide grievance committee and the reviewing committees in carrying out their duties under this chapter.

(P.B. 1978-1997, Sec. 27H.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-34A. Disciplinary Counsel

(a) There shall be a chief disciplinary counsel and such disciplinary counsel and staff as are necessary. The chief disciplinary counsel and the disciplinary counsel shall be appointed by the judges of the superior court for a term of one year commencing July 1, except that initial appointments shall be from such date as the judges determine through the following June 30. In the event that a vacancy arises in any of these positions before the end of a term, the executive committee of the superior court may appoint a qualified individual to fill the vacancy for the balance of the term. The chief disciplinary counsel and disciplinary counsel shall be assigned to the office of the chief court administrator for administrative purposes and shall not engage in the private practice of law. The term ''disciplinary counsel'' as used in the rules for the superior court shall mean the chief disciplinary counsel or any disciplinary counsel.

(b) In addition to any other powers and duties set forth in this chapter, disciplinary counsel shall:

(1) Investigate each complaint which has been forwarded, after a determination that probable cause exists that the respondent is guilty of misconduct, by a grievance panel to the statewide grievance committee for review pursuant to Section 2-32 (i) and pursue such matter before the statewide grievance committee or reviewing committee. When, after a determination of no probable cause by a grievance panel, a complaint is forwarded to the statewide grievance committee

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because it contains an allegation that the respondent committed a crime, and the statewide grievance committee or a reviewing committee determines that a hearing shall be held concerning the complaint pursuant to Section 2-35 (c), the disciplinary counsel shall present the matter to such committee.

(2) Pursuant to Section 2-82, discuss and may negotiate a disposition of the complaint with the respondent or, if represented by an attorney, the respondent's attorney, subject to the approval of the statewide grievance committee or a reviewing committee or the court.

(3) Remove irrelevant information from the complaint file and thereafter permit discovery of information in the file.

(4) Have the power to subpoena witnesses for any hearing before a grievance panel, a reviewing committee or the statewide grievance committee convened pursuant to these rules.

(5) In his or her discretion, recommend dispositions to the statewide grievance committee or the reviewing committee after the hearing on a complaint is concluded.

(6) At the request of the statewide grievance committee or a reviewing committee, prepare and file complaints initiating presentment proceedings in the superior court, whether or not the alleged misconduct occurred in the actual presence of the court, and prosecute same.

(7) At the request of a grievance panel made pursuant to Section 2-29, pursue the matter before the grievance panel on the issue of probable cause.

(8) Investigate and prosecute complaints involving the violation by any person of General Statutes § 51-88.

(Adopted June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003, and amended on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Oct. 1, 2003, and amendment adopted June 30, 2003, to take effect Oct. 1, 2003; Sept. 30, 2003, effective date of adopted rule and amendment changed to Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 2-35. Action by Statewide Grievance Committee or Reviewing Committee

(a) Upon receipt of the record from a grievance panel, the statewide grievance committee may assign the case to a reviewing committee which shall consist of at least three members of the statewide grievance committee, at least one third of whom are not attorneys. The statewide grievance committee may, in its discretion, reassign the case to a different reviewing committee. The committee shall regularly rotate membership on reviewing committees and assignments of complaints from the various grievance panels. An attorney who maintains an office for the practice of law in the same judicial district as the respondent may not sit on the reviewing committee for that case.

(b) The statewide grievance committee and the reviewing committee shall have the power to issue a subpoena to compel any person to appear before it to testify in relation to any matter deemed by the statewide grievance committee or the reviewing committee to be relevant to the complaint and to produce before it for examination any books or papers which, in its judgment, may be relevant to such complaint. Any such testimony shall be on the record.

(c) If the grievance panel determined that probable cause exists that the respondent is guilty of misconduct, the statewide grievance committee or the reviewing committee shall hold a hearing on the complaint. If the grievance panel determined that probable cause does not exist, but filed the matter with the statewide grievance committee because the complaint alleges that a crime has been committed, the statewide grievance committee or the reviewing committee shall review the determination of no probable cause, take evidence if it deems it appropriate and, if it determines that probable cause does exist, shall take the following action: (1) if the statewide grievance committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or assign the matter to a reviewing committee to hold the hearing; or (2) if a reviewing committee reviewed the grievance panel's determination, it shall hold a hearing concerning the complaint or refer the matter to the statewide grievance committee which shall assign it to another reviewing committee to hold the hearing. At least two of the same members of a reviewing committee shall be physically present at all hearings held by such reviewing committee. Unless waived by the disciplinary counsel and the respondent, the remaining member of the reviewing committee shall obtain and review the transcript of each such hearing and shall participate in the committee's determination. The review by the statewide grievance committee or reviewing committee of a grievance panel determination that probable cause exists shall not be limited to the grievance panel determination. The statewide grievance committee or reviewing committee may review the entire record and determine whether any allegation in the complaint, or any issue arising from the review of the record or arising during any hearing on the complaint, supports a finding of probable cause of misconduct. If either the

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statewide grievance committee or the reviewing committee determines that probable cause does exist, it shall issue a written notice which shall include but not be limited to the following: (i) a description of the factual allegation or allegations that were considered in rendering the determination; and (ii) for each such factual allegation, an identification of the specific provision or provisions of the applicable rules governing attorney conduct considered in rendering the determination. All hearings following a determination of probable cause shall be public and on the record. The statewide grievance committee or reviewing committee shall not make a probable cause determination based, in full or in part, on a claim of misconduct not alleged in the complaint without first notifying the respondent that it is considering such action and affording the respondent the opportunity to be heard.

(d) The complainant and respondent shall be entitled to be present at all hearings and other proceedings on the complaint at which testimony is given and to have counsel present. At all hearings the respondent shall have the right to be heard in the respondent's own defense and by witnesses and counsel. The disciplinary counsel shall pursue the matter before the statewide grievance committee or reviewing committee. The disciplinary counsel and the respondent shall be entitled to examine or cross-examine witnesses. At the conclusion of the evidentiary phase of a hearing, the complainant, the disciplinary counsel and the respondent shall have the opportunity to make a statement, either individually or through counsel. The statewide grievance committee or reviewing committee may request oral argument.

(e) Within ninety days of the date the grievance panel filed its determination with the statewide grievance committee pursuant to Section 2-32 (i), the reviewing committee shall render a final written decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent in the superior court and file it with the statewide grievance committee. Where there is a final decision dismissing the complaint, the reviewing committee may give notice in a written summary order to be followed by a full written decision. The reviewing committee's record in the case shall consist of a copy of all evidence it received or considered, including a transcript of any testimony heard by it, and its decision. The record shall also be sent to the statewide grievance committee. The reviewing committee shall forward a copy of the final decision to the complainant, the disciplinary counsel, the respondent, and the grievance panel to which the complaint was forwarded. The decision shall be a matter of public record if it results in the imposition of discipline. The reviewing committee may file a motion for extension of time not to exceed thirty days with the statewide grievance committee which shall grant the motion only upon a showing of good cause. If the reviewing committee does not complete its action on a complaint within the time provided in this section, the statewide grievance committee shall, on motion of the complainant or the respondent or on its own motion, inquire into the delay and determine the appropriate course of action. Enforcement of the final decision, including the publication of the notice of a reprimand pursuant to Section 2-54, shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the statewide grievance committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38 (b).

(f) If the reviewing committee finds probable cause to believe the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

(g) Within thirty days of the issuance to the parties of the final decision by the reviewing committee, the respondent may submit to the statewide grievance committee a request for review of the decision. Any request for review submitted under this section must specify the basis for the request, including, but not limited to, a claim or claims that the reviewing committee's findings, inferences, conclusions or decision is or are: (1) in violation of constitutional, rules of practice or statutory provisions; (2) in excess of the authority of the reviewing committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion and the specific basis for such claim or claims. For grievance complaints filed on or after January 1, 2004, the respondent shall serve a copy of the request for review on disciplinary counsel in accordance with Sections 10-12 through 10-17. Within fourteen days of the respondent's submission of a request for review, disciplinary counsel may file a response. Disciplinary counsel shall serve a copy of the response on the respondent in accordance with Sections 10-12 through 10-17. No reply to the response shall be allowed.

(h) If, after its review of a complaint pursuant to this section that was forwarded to the statewide

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grievance committee pursuant to Section 2-32 (i) (2), a reviewing committee agrees with a grievance panel's determination that probable cause does not exist that the attorney is guilty of misconduct and there has been no finding of probable cause by the statewide grievance committee or a reviewing committee, the reviewing committee shall have the authority to dismiss the complaint within the time period set forth in subsection (e) of this section without review by the statewide grievance committee. The reviewing committee shall file its decision dismissing the complaint with the statewide grievance committee along with the record of the matter and shall send a copy of the decision to the complainant, the respondent, and the grievance panel to which the complaint was assigned.

(i) If the statewide grievance committee does not assign a complaint to a reviewing committee, it shall have one hundred and twenty days from the date the panel's determination was filed with it to render a decision dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37 or directing the disciplinary counsel to file a presentment against the respondent. The decision shall be a matter of public record. The failure of a reviewing committee to complete its action on a complaint within the period of time provided in this section shall not be cause for dismissal of the complaint. If the statewide grievance committee finds probable cause to believe that the respondent has violated the criminal law of this state, it shall report its findings to the chief state's attorney.

(P.B. 1978-1997, Sec. 27J.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the last four sentences of subsection (g) were added.

COMMENTARY—2007: The above change establishes a procedure with regard to grievance complaints filed on or after January 1, 2004, whereby disciplinary counsel may respond to a respondent's request for review of a final decision by a reviewing committee.

Sec. 2-36. Action by Statewide Grievance Committee on Request for Review

Within sixty days of the expiration of the thirty day period for the filing of a request for review under Section 2-35 (g), or, with regard to grievance complaints filed on or after January 1, 2004, within sixty days of the expiration of the fourteen day period for the filing of a response by disciplinary counsel to a request for review under that section, the statewide grievance committee shall issue a written decision affirming the decision of the reviewing committee, dismissing the complaint, imposing sanctions and conditions as authorized by Section 2-37, directing the disciplinary counsel to file a presentment against the respondent in the superior court or referring the complaint to the same or a different reviewing committee for further investigation and a decision. Before issuing its decision, the statewide grievance committee may, in its discretion, request oral argument. The statewide grievance committee shall forward a copy of its decision to the complainant, the disciplinary counsel, the respondent, the reviewing committee and the grievance panel which investigated the complaint. The decision shall be a matter of public record. A decision of the statewide grievance committee shall be issued only if the respondent has timely filed a request for review under Section 2-35 (g).

(P.B. 1978-1997, Sec. 27M.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, "or, with regard to grievance complaints filed on or after January 1, 2004, within sixty days of the expiration of the fourteen day period for the filing of a response by disciplinary counsel to a request for review under that section," was inserted in the first sentence before the phrase "the statewide grievance committee shall issue a written decision."

COMMENTARY—2007: The above change is needed in light of the change to Section 2-35.

Sec. 2-37. Sanctions and Conditions Which May Be Imposed by Committees

(a) A reviewing committee or the statewide grievance committee may impose one or more of the following sanctions and conditions in accordance with the provisions of Sections 2-35 and 2-36:

(1) reprimand;

(2) restitution;

(3) assessment of costs;

(4) an order that the respondent return a client's file to the client;

(5) a requirement that the respondent attend continuing legal education courses, at his or her own expense, regarding one or more areas of substantive law or law office management;

(6) an order to submit to fee arbitration;

(7) with the respondent's consent, an order to submit to periodic audits and supervision of the attorney's trust accounts to insure compliance with the provisions of Section 2-27 and the related Rules of Professional Conduct;

(8) with the respondent's consent, a requirement that the respondent undertake treatment, at his or her own expense, for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse.

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(b) In connection with subsection (a) (6), a party who refuses to utilize the no cost fee arbitration service provided by the Connecticut Bar Association shall pay the cost of the arbitration.

(c) Failure of the respondent to comply with any sanction or condition imposed by the statewide grievance committee or a reviewing committee may be grounds for presentment before the superior court.

(P.B. 1978-1997, Sec. 27M.1.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 2-38. Appeal from Decision of Statewide Grievance Committee or Reviewing Committee to Reprimand

(a) A respondent may appeal to the superior court a decision by the statewide grievance committee or a reviewing committee reprimanding the respondent, except that a respondent may not appeal a decision by a reviewing committee reprimanding the respondent if the respondent has not timely requested a review of the decision by the statewide grievance committee under Section 2-35 (g). Within thirty days from the issuance, pursuant to Section 2-36, of the decision of the statewide grievance committee, the respondent shall: (1) file the appeal with the clerk of the superior court for the judicial district of Hartford and (2) mail a copy of the appeal by certified mail, return receipt requested, to the office of the statewide bar counsel as agent for the statewide grievance committee.

(b) Enforcement of a final decision by the statewide grievance committee reprimanding the respondent pursuant to Section 2-35 (i), including the publication of the notice of reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of such decision. Enforcement of a decision by a reviewing committee reprimanding the respondent, including the publication of the notice of reprimand in accordance with Section 2-54, shall be stayed for thirty days from the issuance to the parties of the final decision of the reviewing committee pursuant to Section 2-35 (g). If within that period the respondent files with the statewide grievance committee a request for review of the reviewing committee's decision, the stay shall remain in effect for thirty days from the issuance by the statewide grievance committee of its final decision pursuant to Section 2-36. If the respondent timely commences an appeal pursuant to subsection (a) of this section, such stay shall remain in full force and effect until the conclusion of all proceedings, including all appeals, relating to the decision reprimanding the respondent. If at the conclusion of all proceedings, the decision reprimanding the respondent is rescinded, the complaint shall be deemed dismissed as of the date of the reprimand decision for all purposes, including the application of Section 2-50 (b). An application to terminate the stay may be made to the court and shall be granted if the court is of the opinion that the appeal is taken only for delay or that the due administration of justice requires that the stay be terminated.

(c) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the statewide bar counsel shall transmit to the reviewing court a certified copy of the entire record of the proceeding appealed from, which shall include the grievance panel's record in the case, as defined in Section 2-32 (i), and a copy of the statewide grievance committee's record or the reviewing committee's record in the case, which shall include a transcript of any testimony heard by it or by a reviewing committee which is required by rule to be on the record, any decision by the reviewing committee in the case, any requests filed pursuant to Section 2-35 (g) of this section, and a copy of the statewide grievance committee's decision on the request for review. By stipulation of all parties to such appeal proceedings, the record may be shortened. The court may require or permit subsequent corrections or additions to the record.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the statewide grievance committee or reviewing committee are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument.

(e) The respondent shall file a brief within thirty days after the filing of the record by the statewide bar counsel. The disciplinary counsel shall file his or her brief within thirty days of the filing of the respondent's brief. Unless permission is given by the court for good cause shown, briefs shall not exceed thirty-five pages.

(f) Upon appeal, the court shall not substitute its judgment for that of the statewide grievance committee or reviewing committee as to the weight of the evidence on questions of fact. The court shall affirm the decision of the committee unless the court finds that substantial rights of the respondent have been prejudiced because the committee's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional, rules of practice or statutory provisions; (2) in excess of the authority of the committee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on

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the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, rescind the action of the statewide grievance committee or take such other action as may be necessary. For purposes of further appeal, the action taken by the superior court hereunder is a final judgment.

(g) In all appeals taken under this section, costs may be taxed in favor of the statewide grievance committee in the same manner, and to the same extent, that costs are allowed in judgments rendered by the superior court. No costs shall be taxed against the statewide grievance committee, except that the court may, in its discretion, award to the respondent reasonable fees and expenses if the court determines that the action of the committee was undertaken without any substantial justification. ''Reasonable fees and expenses'' means any expenses not in excess of $7500 which the court finds were reasonably incurred in opposing the committee's action, including court costs, expenses incurred in administrative proceedings, attorney's fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

(P.B. 1978-1997, Sec. 27N.) (Amended June 29, 1998, to take effect Sept. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; amended June 30, 2003, to take effect Oct. 1, 2003; Sept 30, 2003, effective date of two latest amendments changed to Jan. 1, 2004.)

Sec. 2-39. Reciprocal Discipline

(a) Upon being informed that a lawyer admitted to the Connecticut bar has resigned, been disbarred, suspended or otherwise disciplined, or placed on inactive disability status in another jurisdiction, and that said discipline or inactive disability status has not been stayed, the disciplinary counsel shall obtain a certified copy of the order and file it with the superior court for the judicial district wherein the lawyer maintains an office for the practice of law in this state, except that, if the lawyer has no such office, the disciplinary counsel shall file the certified copy of the order from the other jurisdiction with the superior court for the judicial district of Hartford at Hartford. No entry fee shall be required for proceedings hereunder.

(b) Upon receipt of a certified copy of the order, the court shall forthwith cause to be served upon the lawyer a copy of the order from the other jurisdiction and an order directing the lawyer to file within thirty days of service, with proof of service upon the disciplinary counsel, an answer admitting or denying the action in the other jurisdiction and setting forth, if any, reasons why commensurate action in this state would be unwarranted. Such certified copy will constitute prima facie evidence that the order of the other jurisdiction entered and that the findings contained therein are true.

(c) Upon the expiration of the thirty day period the court shall assign the matter for a hearing. After hearing, the court shall take commensurate action unless it is found that any defense set forth in the answer has been established by clear and convincing evidence.

(d) Notwithstanding the above, a reciprocal discipline action need not be filed if the conduct giving rise to discipline in another jurisdiction has already been the subject of a formal review by the court or statewide grievance committee.

(P.B. 1978-1997, Sec. 28A.) (Amended June 29, 1998, to take effect Sept. 1, 1998; amended August 24, 2001, to take effect Jan. 1, 2002; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-40. Discipline of Attorneys Convicted of a Felony and Other Matters in Connecticut

(a) The clerk of the superior court location in this state in which an attorney is convicted of a serious crime as defined herein shall transmit, immediately upon the imposition of sentence, a certificate of the conviction to the disciplinary counsel and to the statewide grievance committee. The attorney shall also notify the disciplinary counsel in writing of his or her conviction. The disciplinary counsel or designee shall, pursuant to Section 2-47, file a presentment against the attorney predicated upon the conviction. No entry fee shall be required for proceedings hereunder. The filing of a presentment shall be discretionary with the disciplinary counsel where the offense for which the attorney has been convicted carries a maximum penalty of a period of incarceration of one year or less.

(b) The term ''conviction'' as used herein refers to the disposition of any charge of a serious crime as hereinafter defined resulting from either a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal.

(c) The term ''serious crime'' as used herein shall mean any felony or any larceny or any crime for which the attorney was sentenced to a term of incarceration or for which a suspended period of incarceration was imposed.

(d) The provisions of subsection (e) of this section notwithstanding, after sentencing an attorney who has been convicted of a serious crime, the sentencing judge may in his or her discretion enter

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an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the conviction. Thereafter, upon good cause shown, the judge who placed the attorney on suspension or any other judge before whom a presentment is pending may, in the interest of justice, set aside or modify the interim suspension.

(e) A presentment filed pursuant to this section shall be heard by the judge who presided at the sentencing. A hearing on the presentment complaint addressing the issue of the eligibility of such attorney to continue the practice of law in this state shall be held within thirty days of sentencing or the filing of the presentment, whichever is later. Such hearing shall be prosecuted by the disciplinary counsel or an attorney designated pursuant to Section 2-48. At such hearing the attorney shall have the right to counsel, to be heard in his or her own defense and to present evidence and witnesses in his or her behalf. After such hearing, the judge shall enter an order dismissing the matter or imposing discipline upon such attorney in the form of suspension for a period of time, disbarment or such other discipline as the judge deems appropriate.

(f) Whenever the judge enters an order suspending or disbarring an attorney pursuant to subsections (d) or (e) of this section, the judge may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the attorney's interests.

(g) If an attorney suspended solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction has been vacated or reversed, the court shall vacate the order of interim suspension and place the attorney on active status. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceeding then pending against the attorney.

(h) An attorney's failure to send the written notice required by this section shall constitute misconduct.

(i) Immunity from prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by a judge of the superior court. The granting of a pretrial diversion program to an attorney charged with a serious crime as defined herein is not a bar to disciplinary proceedings, unless otherwise ordered by the judge who granted the program to the attorney.

(P.B. 1978-1997, Sec. 28B.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, subsection (a) read: ''The clerk of the superior court location in this state in which a lawyer is convicted of a felony, any larceny or any crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed, shall transmit, immediately upon the imposition of sentence, a certificate of the conviction to the disciplinary counsel and to the statewide grievance committee. The lawyer shall also notify the disciplinary counsel in writing of his or her conviction. The disciplinary counsel or designee shall, pursuant to Section 2-47, file a presentment against the lawyer predicated upon the conviction. No entry fee shall be required for proceedings hereunder.'' In 2007, the current subsections (b), (c) and (h) were added.

Prior to 2007, subsection (b), which became the current subsection (d), read: ''The provisions of subsection (c) of this section notwithstanding, after sentencing an attorney who has been convicted of a felony, any larceny or any crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed, the sentencing judge may in his or her discretion enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the conviction. Thereafter, upon good cause shown, the judge before whom the presentment is pending may, in the interest of justice, set aside or modify the interim suspension.''

In 2007, what had been subsection (c) became the current subsection (e). The word ''sentencing'' was substituted for ''trial which resulted in the conviction'' in the first sentence of the current subsection (e).

In 2007, what had been subsection (d) became the current subsection (f). In the current subsection (f), ''pursuant to subsections (d) or (e)'' was substituted for ''pursuant to subsections (b) or (c).''

In 2007, what had been subsection (e) became the current subsection (g), and what had been subsection (f), became the current subsection (i). In the current subsection (i), the word ''serious'' was inserted before the word ''crime'' in the first sentence, and the phrase ''as defined herein'' was added after the word ''crime.''

COMMENTARY—2007: The above changes make this rule consistent with Section 2-41 with regard to the definitions of ''conviction'' and ''serious crime.'' Other changes include a provision giving disciplinary counsel discretion in filing a presentment where the offense for which the attorney has been convicted carries a maximum penalty of a period of incarceration of one year or less and making it misconduct for an attorney to fail to notify disciplinary counsel in writing of the attorney's conviction.

Sec. 2-41. Discipline of Attorneys Convicted of a Felony and Other Matters in Another Jurisdiction

(a) An attorney shall send to the disciplinary counsel written notice of his or her conviction in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined within ten days of the entry of the judgment of conviction. That written notice shall be sent by certified mail, return receipt requested.

(b) The term ''conviction'' as used herein refers to the disposition of any charge of a serious crime as hereinafter defined resulting from either a plea of guilty or nolo contendere or from a verdict after

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trial or otherwise, and regardless of the pendency of any appeal.

(c) The term ''serious crime'' as used herein shall mean any felony or any larceny as defined in the jurisdiction in which the attorney was convicted or any crime for which the attorney was sentenced to a term of incarceration or for which a suspended period of incarceration or a period of probation was imposed.

(d) The written notice required by subsection (a) of this section shall include the name and address of the court in which the judgment of conviction was entered, the date of the judgment of conviction, and the specific section of the applicable criminal or penal code upon which the conviction is predicated.

(e) Upon receipt of the written notice of conviction the disciplinary counsel shall obtain a certified copy of the attorney's judgment of conviction, which certified copy shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney on the basis of the conviction. Upon receipt of the certified copy of the judgment of conviction, the disciplinary counsel shall file a presentment against the attorney with the superior court for the judicial district wherein the attorney maintains an office for the practice of law in this state, except that, if the attorney has no such office, the disciplinary counsel shall file it with the superior court for the judicial district of Hartford. The filing of a presentment shall be discretionary with the disciplinary counsel where the offense for which the attorney has been convicted carries a maximum penalty of a period of incarceration of one year or less. The sole issue to be determined in the presentment proceeding shall be the extent of the final discipline to be imposed, provided that the presentment proceeding instituted will not be brought to hearing until all appeals from the conviction are concluded unless the attorney requests that the matter not be deferred. The disciplinary counsel shall also apply to the court for an order of immediate interim suspension, which application shall contain the certified copy of the judgment of conviction. The court may in its discretion enter an order immediately suspending the attorney pending final disposition of a disciplinary proceeding predicated upon the judgment of conviction. Thereafter, upon good cause shown, the court may, in the interest of justice, set aside or modify the interim suspension. Whenever the court enters an order suspending or disbarring an attorney pursuant to this section, the court may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the attorney's interests.

(f) If an attorney suspended solely under the provisions of this section demonstrates to the court that the underlying judgment of conviction has been vacated or reversed, the court shall vacate the order of interim suspension and place the attorney on active status. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceeding then pending against the attorney.

(g) An attorney's failure to send the written notice required by this section shall constitute misconduct.

(h) No entry fee shall be required for proceedings hereunder.

(i) Immunity from prosecution granted to an attorney is not a bar to disciplinary proceedings, unless otherwise ordered by a judge of the superior court. The granting of a pretrial diversion program to an attorney charged with a serious crime as defined herein is not a bar to disciplinary proceedings, unless otherwise ordered by the judge who granted the program to the attorney.

(P.B. 1978-1997, Sec. 28B.1.) (Amended June 29, 1998, to take effect Sept. 1, 1998; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the phrase ''or a period of probation'' was inserted at the end of subsection (c), before the words ''was imposed.'' The words ''a maximum penalty of a'' were added to the third sentence of subsection (e), before the phrase ''period of incarceration of one year or less.'' In 2007, subsection (i) was added.

COMMENTARY—2007: The change in subsection (c) is made because in federal court and in the courts of some other states a sentence of probation is not always accompanied by a suspended sentence. In such cases, probation is a disposition in and of itself. The addition of subsection (i) above is so that Section 2-41 mirrors Section 2-40 in this regard to make it clear that the granting of immunity from prosecution or of a pretrial diversionary program is not a bar to disciplinary proceedings.

Sec. 2-42. Conduct Constituting Threat of Harm to Clients

(a) If there is a disciplinary proceeding pending against a lawyer, or if there has been a notice of overdraft in accordance with the provisions of Section 2-28 (f) and the grievance panel, the reviewing committee, the statewide grievance committee or the disciplinary counsel believes that the lawyer poses a substantial threat of irreparable harm to his or her clients or to prospective clients, or that there has been an unexplained overdraft in the lawyer's trust funds account, the panel or committee shall so advise the disciplinary counsel. The disciplinary counsel shall, upon being so advised or upon his or her own belief, apply to the court for an order of interim suspension. The disciplinary counsel shall provide the

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lawyer with notice that an application for interim suspension has been filed and that a hearing will be held on such application.

(b) The court, after hearing, pending final disposition of the disciplinary proceeding, may, if it finds that the lawyer poses a substantial threat of irreparable harm to his or her clients or to prospective clients, enter an order of interim suspension, or may order such other interim action as deemed appropriate. Thereafter, upon good cause shown, the court may, in the interest of justice, set aside or modify the interim suspension or other order entered pursuant hereto. Whenever the court enters an interim suspension order pursuant hereto, the court may appoint a trustee, pursuant to Section 2-64, to protect the clients' and the suspended attorney's interests.

(c) No entry fee shall be required for proceedings hereunder. Any hearings necessitated by the proceedings may, in the discretion of the court, be held in chambers.

(P.B. 1978-1997, Sec. 28C.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the phrase ", or if there has been a notice of overdraft in accordance with the provisions of Section 2-28 (f)" was inserted in the first sentence of subsection (a), after the introductory clause, "[i]f there is a disciplinary proceeding pending against a lawyer." The phrase "or that there has been an unexplained overdraft in the lawyer's trust fund account" was inserted at the end of the first sentence of subsection (a), before the clause reading "the panel or committee shall so advise the disciplinary counsel."

COMMENTARY—2007: The above changes will allow prompt action to be taken in cases of unexplained or inadequately explained overdrafts.

Sec. 2-43. Notice by Attorney of Alleged Misuse of Clients' Funds and Garnishments of Lawyers' Trust Accounts

(a) When any complaint, counterclaim, cross complaint, special defense or other pleading in a judicial or administrative proceeding alleges a lawyer's misuse of funds handled by the lawyer in his or her capacity as a lawyer or a fiduciary, the person signing the pleading shall mail a copy thereof to the statewide bar counsel.

(b) In any case where a lawyer's trust account, as defined in Section 2-28 (b), is garnisheed, or otherwise liened, the party who sought the garnishment or lien shall mail a copy of the garnishee process or writ of attachment to the statewide bar counsel.

(P.B. 1978-1997, Sec. 28D.)

Sec. 2-44. Power of Superior Court to Discipline Attorneys and to Restrain Unauthorized Practice

The superior court may, for just cause, suspend or disbar attorneys and may, for just cause, punish or restrain any person engaged in the unauthorized practice of law.

(P.B. 1978-1997, Sec. 29.)

Sec. 2-45. —Cause Occurring in Presence of Court

If such cause occurs in the actual presence of the court, the order may be summary, and without complaint or hearing; but a record shall be made of such order, reciting the ground thereof. Without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the statewide grievance committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction.

(P.B. 1978-1997, Sec. 30.)

Sec. 2-46. Suspension of Attorneys Who Violate Support Orders

(a) Except as otherwise provided in this section, the procedures of General Statutes §§ 46b-220 through 46b-223 shall be followed with regard to the suspension from the practice of law of attorneys who are found to be delinquent child support obligors.

(b) A judge, upon finding that an attorney admitted to the bar in this state is a delinquent child support obligor as defined in General Statutes § 46b-220 (a), may, pursuant to General Statutes § 46b-220 (b), issue a suspension order concerning that attorney.

(c) If the attorney obligor fails to comply with the conditions of the suspension order within thirty days of its issuance, the department of social services, a support enforcement officer, the attorney for the obligee or the obligee, as provided in the suspension order, shall file with the clerk of the superior court which issued the suspension order an affidavit stating that the conditions of the suspension order have not been met, and shall serve the attorney obligor with a copy of such affidavit in accordance with Sections 10-12 through 10-17. The affidavit shall be filed within forty-five days of the expiration of the thirty day period.

(d) Upon receipt of the affidavit, the clerk shall forthwith bring the suspension order and the affidavit to a judge of the superior court for review. If the judge determines that pursuant to the provisions of General Statutes § 46b-220 the attorney obligor should be suspended, the judge shall suspend the attorney obligor from the practice of law, effective immediately.

(e) A suspended attorney who has complied with the conditions of the suspension order concerning reinstatement, shall file a motion with the court to vacate the suspension. Upon proof of such compliance, the court shall vacate the order

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of suspension and reinstate the attorney. The provisions of Section 2-53 shall not apply to suspensions under this section.

(f) The clerk shall notify the statewide bar counsel of any suspensions and reinstatements ordered pursuant to this section.

(P.B. 1978-1997, Sec. 30A.)

Sec. 2-47. Presentments and Unauthorized Practice of Law Petitions

(a) Presentment of attorneys for misconduct, whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the disciplinary counsel. Service of the complaint shall be made as in civil actions. Any interim proceedings to the contrary notwithstanding, a hearing on the merits of the complaint shall be held within sixty days of the date the complaint was filed with the court. At such hearing, the respondent shall have the right to be heard in his or her own defense and by witnesses and counsel. After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the attorney before he or she may apply for readmission or reinstatement. Unless otherwise ordered by the court, such complaints shall be prosecuted by the disciplinary counsel or an attorney appointed pursuant to Section 2-48.

(b) The sole issue to be determined in a disciplinary proceeding predicated upon conviction of a felony, any larceny or crime for which the lawyer is sentenced to a term of incarceration or for which a suspended period of incarceration is imposed shall be the extent of the final discipline to be imposed.

(c) A petition to restrain any person from engaging in the unauthorized practice of law not occurring in the actual presence of the court may be made by written complaint to the superior court in the judicial district where such violation occurs. When offenses have been committed by the same person in more than one judicial district, presentment for all offenses may be made in any one of such judicial districts. Such complaint may be prosecuted by the state's attorney, by the disciplinary counsel, or by any member of the bar by direction of the court. Upon the filing of such complaint, a rule to show cause shall issue to the defendant, who may make any proper answer within twenty days from the return of the rule and who shall have the right to be heard as soon as practicable, and upon such hearing the court shall make such lawful orders as it may deem just. Such complaints shall be proceeded with as civil actions.

(d) (1) If a determination is made by the statewide grievance committee or a reviewing committee that a respondent is guilty of misconduct and such misconduct does not otherwise warrant a presentment to the superior court, but the respondent has been disciplined pursuant to these rules by the statewide grievance committee, a reviewing committee or the court at least three times pursuant to complaints filed within the five year period preceding the date of the filing of the grievance complaint that gave rise to such finding of misconduct in the instant case, the statewide grievance committee or the reviewing committee shall direct the disciplinary counsel to file a presentment against the respondent in the superior court. Service of the matter shall be made as in civil actions. The statewide grievance committee or the reviewing committee shall file with the court the record in the matter and a copy of the prior discipline issued against the respondent within such five year period. The sole issue to be determined by the court upon the presentment shall be the appropriate action to take as a result of the nature of the misconduct in the instant case and the cumulative discipline issued concerning the respondent within such five year period. Such action shall be in the form of a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the respondent before he or she may apply for readmission or reinstatement. This subsection shall apply to all findings of misconduct issued from the day of enactment forward and the determination of presentment shall consider all discipline pursuant to complaints filed within the five year period preceding the date of the filing of the grievance complaint that gave rise to the finding of misconduct even if they predate the effective date of these rules.

(2) If the respondent has appealed the issuance of a finding of misconduct made by the statewide grievance committee or the reviewing committee, the court shall first adjudicate and decide that appeal in accordance with the procedures set forth in subsections (d) through (f) of Section 2-38. In the event the court denies the respondent's appeal of the finding of misconduct, the court shall then adjudicate the presentment brought under this section. In no event shall the court review the merits of the matters for which the prior reprimands were issued against the respondent.

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(e) No entry fee shall be required for the filing of any complaint pursuant to this section.

(P.B. 1978-1997, Sec. 31.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005; amended June 20, 2005, to take effect Jan. 1, 2006; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the words "disciplinary counsel" were substituted for "statewide grievance committee or a reviewing committee" in the first sentence of subsection (a). The words "pursuant to complaints filed" were inserted in the first sentence of subdivision (1) of subsection (d), after the phrase "at least three times." The words "pursuant to complaints filed" were inserted in the last sentence of subdivision (1) of subsection (d), after the words "the determination of presentment shall consider all discipline."

COMMENTARY—2007: The change to subsection (a) is made to be consistent with Section 2-34A (b) (6), which provides that presentments are filed by disciplinary counsel.

Under current subsection (d), the "three strike" provision will apply to a new complaint against a respondent only if the three prior disciplines against that respondent occurred within five years preceding the date of the filing of the new grievance complaint. The result of this is that if four complaints are filed against a lawyer in close temporal proximity and three resulted in discipline while the fourth is pending, the three earlier disciplines will not qualify under subsection (d) as "strikes" with regard to the matter still pending. The above revision to subsection (d) is intended to address this situation so that the three earlier disciplines in the example would qualify as "strikes" with regard to the pending grievance complaint.

Sec. 2-47A. Disbarment of Attorney for Misappropriation of Funds

In any disciplinary proceeding where there has been a finding by a judge of the superior court that a lawyer has knowingly misappropriated a client's funds or other property held in trust the discipline for such conduct shall be disbarment.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY—2007: The above rule is a codification of the "*Wilson*" rule. In *In re Wilson,* 81 N.J. 451, 409 A.2d 1153 (1979), the New Jersey Supreme Court articulated a rule that the universal response in cases of knowing misappropriation of clients' money should, without exception, be disbarment.

See also the proposed revision to Section 2-53, which provides that an application for reinstatement may not be considered until twelve years have elapsed from the date of an order disbarring an attorney for misappropriation of funds.

Sec. 2-48. Designee to Prosecute Presentments

The executive committee of the superior court may choose one or more members of the bar of this state to prosecute presentments. The chief court administrator may also contract with members of the bar of this state to prosecute presentments, actions for reciprocal discipline, actions for interim suspension and disciplinary proceedings predicated on the conviction of an attorney of a felony or other crime set out in Section 2-40.

(P.B. 1978-1997, Sec. 31A.)(Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-49. Restitution

Whenever restitution has been made the panel or committee investigating the attorney's conduct shall nevertheless determine if further proceedings are necessary. If it is found that further proceedings are deemed unnecessary, such decision shall be reviewed by the statewide grievance committee in accordance with the provisions of this chapter.

(P.B. 1978-1997, Sec. 31B.)

Sec. 2-50. Records of Statewide Grievance Committee, Reviewing Committee and Grievance Panel

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

(a) The statewide grievance committee shall maintain the record of each grievance proceeding. The record in a grievance proceeding shall consist of the following:

(1) The grievance panel's record as set forth in Section 2-32 (i);

(2) The reviewing committee's record as set forth in Section 2-35 (e);

(3) The statewide grievance committee's record;

(4) Any probable cause determinations issued by the statewide grievance committee or a reviewing committee;

(5) Transcripts of hearings held before the statewide grievance committee or a reviewing committee;

(6) The reviewing committee's proposed decision;

(7) Any statement submitted to the statewide grievance committee concerning a proposed decision;

(8) The statewide grievance committee's final decision;

(9) The reviewing committee's final decision;

(10) Any request for review submitted to the statewide grievance committee concerning a reviewing committee's decision; and

(11) The statewide grievance committee's decision on the request for review.

(b) The following records of the statewide grievance committee shall be non-public:

(1) All records pertaining to grievance complaints that have been decided by a local grievance committee prior to July 1, 1986.

(2) All records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have been dismissed by a grievance panel, by the statewide grievance committee or by a reviewing committee. For purposes of this

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section, all grievance complaints that were pending before a grievance panel on July 1, 1986, shall be deemed to have been filed on that date.

(3) All records of complaints dismissed pursuant to Section 2-32 (a) (2).

(4) All records of the statewide grievance committee and grievance panels pertaining to grievance proceedings that have been concluded by: (A) a final judgment of the superior court, after all appeals are exhausted, in a proceeding under Section 2-38 rescinding a reprimand, including a judgment directed on an appeal from the superior court; (B) a final judgment of the superior court, after all appeals are exhausted, in a proceeding commenced pursuant to Section 2-47, dismissing a presentment, including a judgment directed on an appeal from the superior court; or (C) a final judgment of the superior court, after all appeals are exhausted, dismissing a proceeding commenced pursuant to Sections 2-39 through 2-46 or Section 2-52, including a judgment directed on an appeal from the superior court.

(5) All records of pending grievance complaints in which probable cause has not yet been determined.

(c) Unless otherwise ordered by the court, all non-public records shall be available only to the statewide grievance committee or its counsel, the reviewing committees, the grievance panels or their counsel, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee or 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 respondent, to any other person. Such records may be used or considered in any subsequent disciplinary or client security fund proceeding pertaining to the respondent.

(d) The following records of the statewide grievance committee shall be public:

(1) Prior to a final decision being issued by the statewide grievance committee or a reviewing committee, the following portions of the record: (A) the grievance panel's probable cause determination(s); (B) any probable cause determination(s) issued by the statewide grievance committee or a reviewing committee and, (C) transcripts of any public hearings held following a determination that probable cause exists.

(2) After a final decision has been issued by the statewide grievance committee or a reviewing committee, all records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have not been dismissed or are not otherwise classified by this rule as non-public.

(e) Any respondent who was the subject of a complaint in which the respondent was misidentified and the complaint was dismissed shall be deemed to have never been subject to disciplinary proceedings with respect to that complaint and may so swear under oath.

(P.B. 1978-1997, Sec. 32.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this section was "Records of Statewide Grievance Committee, Reviewing Committee, Grievance Panel and Bar Examining Committee."

Prior to 2007, this section read:

"(a) The records and transcripts, if any, of hearings conducted by the state bar examining committee or the several standing committees on recommendations for admission to the bar shall be available only to such committee or to a judge of the superior court or to the statewide grievance committee or, with the consent of the applicant, to any other person, unless otherwise ordered by the court.

"(b) For purposes of this section, the record in a grievance proceeding shall consist of the following: (1) the grievance panel's record, (2) the reviewing committee's record, (3) any statement submitted to the statewide grievance committee concerning a proposed decision, (4) any request submitted to the statewide grievance committee concerning a reviewing committee decision, and (5) the decision and record, if any, of the statewide grievance committee or reviewing committee. The statewide grievance committee shall maintain the record of each grievance proceeding, including presentments. All such records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have not been dismissed by a grievance panel, by the statewide grievance committee or by a reviewing committee, shall be public. All such records pertaining to grievance complaints that have been filed on or after July 1, 1986, and that have been dismissed by a grievance panel, by the statewide grievance committee or by a reviewing committee shall be available only to such committee or its counsel, to reviewing committees, to grievance panels, to a judge of the superior court, to the standing committee on recommendations for admission to the bar, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court. For all complaints filed on or after July 1, 1986, the following shall be public records: (1) the grievance panel's probable cause determination, (2) the reviewing committee's proposed or final decision, (3) the statewide grievance committee's decision and (4) transcripts of hearings held following a determination that probable cause exists except that records of complaints dismissed pursuant to Section 2-32 (a) (2) shall not be public. For purposes of this section, all grievance complaints that are pending before a grievance panel on July 1, 1986, shall be deemed to have been filed on that date. Notwithstanding the above, in any proceeding which has been concluded by: (A) a final decision of the statewide grievance committee or a reviewing committee thereof or a grievance panel dismissing the complaint; or (B) a final judgment of the superior court, after all appeals are exhausted, in a proceeding under Section 2-38 rescinding a reprimand, including a judgment directed on an appeal from the superior court; or (C) a final judgment of the superior court in favor of a respondent, after all appeals are exhausted, in a proceeding commenced pursuant to Sections 2-36, 2-39

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through 2-46, and Sections 2-47 or 2-52, including a judgment directed on an appeal from the superior court, all records of the statewide grievance committee, a grievance panel and any disciplinary counsel shall not be made public. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding pertaining to the respondent and such records shall be available in such proceedings to a judge of the superior court or to the standing committee on recommendations for admission to the bar, to disciplinary counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

"(c) Any respondent who shall have been the subject of a complaint in which the respondent was misidentified and which has been dismissed shall be deemed to have never been subject to disciplinary proceedings with respect to that complaint and may so swear under oath.

"(d) The records and decisions pertaining to grievance complaints that have been decided by a local grievance committee prior to July 1, 1986, shall be available only to the statewide grievance committee or its counsel, to reviewing committees, to grievance panels, to a judge of the superior court, to the standing committee on recommendations for admission to the bar, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court."

COMMENTARY—2007: The above changes clarify and simplify this section. That part of this section that pertained to records of the bar examining committee has been amended and transferred to new Section 2-4A.

Sec. 2-51. Costs and Expenses

Costs may be taxed against the respondent in favor of the state, if the respondent be found guilty of the offense charged in whole or in part, at the discretion of the court. The court may also, upon any such complaint by the state's attorney or by the statewide grievance committee, as the case may be, audit and allow (whatever may be the result of the proceeding) reasonable expenses to be taxed as part of the expenses of the court.

(P.B. 1978-1997, Sec. 34.)

Sec. 2-52. Resignation of Attorney

(a) The superior court may, under the procedure provided herein, permit the resignation of an attorney whose conduct is the subject of investigation by a grievance panel, a reviewing committee or the statewide grievance committee or against whom a presentment for misconduct under Section 2-47 is pending.

(b) Such resignation shall be in writing, signed by the attorney, and filed in sextuplicate with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, to the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, and one copy to the standing committee on recommendations for admission to the bar. Such resignation shall not become effective until accepted by the court after hearing following a report by the statewide grievance committee that the investigation has been completed, whether or not the attorney seeking to resign shall, in the resignation, waive the privilege of applying for readmission to the bar at any future time.

(P.B. 1978-1997, Sec. 35.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 20, 2005, to take effect Jan.1, 2006.)

Sec. 2-53. Reinstatement after Suspension, Disbarment or Resignation

(a) No application for reinstatement or readmission shall be considered by the court unless the applicant, inter alia, states under oath in the application that he or she has successfully fulfilled all conditions imposed on him or her as a part of the applicant's discipline. However, if an applicant asserts that a certain condition is impossible to fulfill, he or she may apply, stating that assertion and the basis therefor. It is the applicant's burden to prove at the hearing on reinstatement or readmission the impossibility of the certain condition. Any application for reinstatement or readmission to the bar shall contain a statement by the applicant indicating whether such applicant has previously applied for reinstatement or readmission and if so, when. The application shall be referred, by the court to which it is brought, to the standing committee on recommendations for admission to the bar that has jurisdiction over the judicial district court location in which the applicant was suspended or disbarred or resigned, and notice of the pendency of such application shall be given to the state's attorney of that judicial district, the chair of the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned, and it shall also be published in the Connecticut Law Journal. The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. The court shall thereupon inform the chief justice of the supreme court of the pending application and report, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. Such three judges, or a majority of them, shall determine whether the application should be granted.

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(b) The standing committee shall notify the presiding judge, no later than fourteen days prior to the court hearing, if the committee will not be represented by counsel at the hearing and, upon such notification, the presiding judge may appoint, in his or her discretion, an attorney to review the issue of reinstatement and report his or her findings to the court. The attorney so appointed shall be compensated in accordance with a fee schedule approved by the executive committee of the superior court.

(c) The applicant shall pay to the clerk of the superior court $200 at the time his or her application is filed. This sum shall be expended in the manner provided by Section 2-22 of these rules. If the petition for readmission or reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.

(d) An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline specifically provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement, unless otherwise ordered by the court at the time the discipline was imposed.

(e) In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the date of the order disbarring the attorney. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated.

(P.B. 1978-1997, Sec. 36.) (Amended Nov. 17, 1999, on an interim basis, to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001; amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, subsection (e) was added.

COMMENTARY—2007: The above change requires that an application for reinstatement may not be considered until twelve years have elapsed from the date of an order disbarring an attorney pursuant to proposed new Section 2-47A for misappropriation of funds.

Sec. 2-54. Publication of Notice of Reprimand, Suspension, Disbarment, Resignation, Placement on Inactive Status or Reinstatement

(a) Notice of the final action transferring an attorney to inactive status or reprimanding, suspending, or disbarring an attorney from practice in this state shall be published once in the Connecticut Law Journal by the authority accepting or approving such action. Notice of a reprimand by the statewide grievance committee or by a reviewing committee shall not be published until the expiration of any stay pursuant to Sections 2-35 (e) and 2-38.

(b) Notice of the resignation or reinstatement after suspension, disbarment, resignation or placement on inactive status of an attorney shall be published once in the Connecticut Law Journal by the authority accepting or approving such action.

(P.B. 1978-1997, Sec. 36A.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 2-55. Retirement of Attorney

Written notice of retirement from the practice of law, pursuant to the provisions of General Statutes § 51-81b, 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 in Hartford county who shall notify the statewide bar counsel of such retirement. The notice shall include the attorney's juris number and be filed in triplicate with such clerk. Upon the filing of such notice, the attorney shall no longer be eligible to practice law as an attorney admitted in the state of Connecticut. Retirement may be revoked at any time upon written notice to the clerk for Hartford county and the statewide bar counsel. Disciplinary proceedings against an attorney shall not be stayed or terminated on account of the attorney's retirement from the practice of law.

(P.B. 1978-1997, Sec. 37.) (Amended Nov. 17, 1999, on an interim basis pursuant to Section 1-9 (c), to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 2-56. Inactive Status of Attorney

During the time an order placing an attorney on inactive status is in effect, such attorney shall be precluded from practicing law. No entry fee shall be required for proceedings pursuant to this section and Sections 2-57 through 2-62. Any hearings necessitated by the proceedings may, in the discretion of the court, be held in chambers, and records and papers filed in connection therewith shall be open for inspection only to persons having a proper interest therein and upon order of the court. The court shall, in exercising discretion, weigh the public policy in favor of open proceedings, as well as the duty to protect the public, against the attorney's right to medical and mental health privacy and ability to pursue a livelihood.

(P.B. 1978-1997, Sec. 39.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

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Sec. 2-57. —Prior Judicial Determination of Incompetency or Involuntary Commitment

In the event an attorney is by a court of competent jurisdiction (1) declared to be incapable of managing his or her affairs or (2) committed involuntarily to a mental hospital for drug dependency, mental illness, or the addictive, intemperate, or excessive use of alcohol, the superior court, upon notice from a grievance panel, a reviewing committee, the statewide grievance committee or a state's attorney and upon proof of the fact of incapacity to engage in the practice of law, shall enter an order placing such attorney upon inactive status, effective immediately, for an indefinite period and until further order of the court. A copy of such order shall be served, in such manner as the court shall direct, upon such attorney, the attorney's conservator if any, and the director of any mental hospital in which the attorney may reside.

(P.B. 1978-1997, Sec. 40.)

Sec. 2-58. —No Prior Determination of Incompetency or Involuntary Commitment

(a) Whenever a grievance panel, a reviewing committee, the statewide grievance committee or the disciplinary counsel shall have reason to believe that an attorney is incapacitated from continuing to practice law by reason of mental infirmity or illness or because of drug dependency or addiction to alcohol, such panel, committee or counsel, shall petition the court to determine whether the attorney is so incapacitated and the court may take or direct such action as it deems necessary or proper for such determination, including examination of the attorney by such qualified medical expert or experts as the court shall designate, at the expense of the judicial branch. If, upon due consideration of the matter, the court is satisfied and concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order placing the attorney in an inactive status on the ground of such disability for an indefinite period and until the further order of the court, and any pending disciplinary proceedings against the attorney shall be held in abeyance.

(b) The court may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and shall appoint an attorney, at the expense of the judicial branch, to represent any respondent who is without adequate representation.

(P.B. 1978-1997, Sec. 41.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-59. —Disability Claimed during Course of Disciplinary Proceeding

If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering, by reason of mental infirmity or illness, or because of drug dependency or addiction to alcohol, from a disability which makes it impossible for the respondent adequately to defend himself or herself, the court thereupon shall, in a proceeding instituted in substantial accordance with the provisions of Section 2-58, enter an order placing the respondent on inactive status until a determination is made of the respondent's capacity to defend himself or herself. Notice of the institution of inactive status proceedings shall be provided to the statewide bar counsel. If the court determines that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.

(P.B. 1978-1997, Sec. 42.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

Sec. 2-60. —Reinstatement upon Termination of Disability

(a) Any attorney placed upon inactive status under the provisions of these rules shall be entitled to apply for reinstatement, without the payment of an entry fee, at such intervals as the court may direct in the order placing the attorney on inactive status or any modification thereof. Such application shall be granted by the court upon a showing by clear and convincing evidence that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon such application, the court may take or direct such action as it deems necessary or proper, including the determination whether the attorney's disability has been removed, and including direction of an examination of the attorney by such qualified medical expert or experts as the court shall designate. The court shall direct that the expense of such an examination be paid either by the attorney or by the judicial branch.

(b) Where an attorney has been placed on inactive status by an order in accordance with the provisions of Section 2-57 and thereafter, in proceedings duly taken, has been judicially declared to be competent, the court may dispense with further evidence that his or her disability has been removed and may direct his or her return to active status upon such terms as are deemed proper and advisable.

(P.B. 1978-1997, Sec. 44.)

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Sec. 2-61. —Burden of Proof in Inactive Status Proceedings

In a proceeding seeking an order to place an attorney on inactive status, the burden of proof shall rest with the petitioner. In a proceeding seeking an order terminating inactive status, the burden of proof shall rest with the inactive attorney.

(P.B. 1978-1997, Sec. 45.)

Sec. 2-62. —Waiver of Doctor-Patient Privilege upon Application for Reinstatement

The filing of an application for reinstatement by an attorney on inactive status shall be deemed to constitute a waiver of any doctor-patient privilege existing between the attorney and any psychiatrist, psychologist, physician or hospital who or which has examined or treated the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or at which the attorney has been examined or treated since being placed on inactive status and shall furnish to the court written consent to each to divulge such information and records as are requested by court-appointed medical experts or by the clerk of the court.

(P.B. 1978-1997, Sec. 46.)

Sec. 2-63. Definition of Respondent

When used in Sections 2-29 through 2-62 the word ''respondent'' shall mean the attorney against whom a grievance complaint or presentment has been filed or a person who is alleged to have been engaged in the unauthorized practice of law pursuant to General Statutes § 51-88.

(P.B. 1978-1997, Sec. 46A.)

Sec. 2-64. Appointment of Attorney to Protect Clients' and Attorney's Interests

(a) Whenever an attorney is placed upon inactive status, suspended, disbarred, or resigns, the court, upon such notice to him or her as the court may direct, shall appoint an attorney or attorneys to inventory the files of the inactive, suspended, disbarred or resigned attorney and to take such action as seems indicated to protect the interests of the attorney's clients. The court may also appoint an attorney to protect the interests of the attorney placed on inactive status, suspended, disbarred or resigned with respect to such files, when the attorney is not otherwise represented and the court deems that such representation is necessary. If the discipline imposed is not effective immediately as a result of an appeal or stay, the court, after the hearing and consideration of the merits of the appeal or reason for the stay, may issue interim orders to protect the public during the pendency of the appeal period or stay, until the discipline order becomes effective. In case of an attorney's death, the court may appoint an attorney where no partner, executor or other responsible party capable of conducting the deceased attorney's affairs is known to exist or willing to assume the responsibility.

(b) Any attorney so appointed by the court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as is necessary to carry out the order of the court which appointed the attorney to make such inventory.

(c) Not less frequently than once each year and at such time as the attorney may be returned to active status, reinstated or readmitted to the practice of law or when the attorney appointed to protect clients' interests has finished rendering services to those clients, the appointed attorney shall file with the court, for its examination and approval, a report showing fees earned from the clients of the attorney, necessary disbursements, and the amount requested by the appointed attorney as a fee for services rendered, to be paid out of the funds received. Any attorney so appointed by the court for the inactive, suspended, disbarred, resigned or deceased attorney may also be reimbursed for his or her services from any amount found to be due to the inactive, suspended, disbarred, resigned or deceased attorney for services rendered to such clients. All attorney's fees paid to any attorney appointed hereunder shall be subject to court approval.

(d) Unless the attorney appointed to protect clients' interests is a partner or associate of the attorney, if the attorney is returned to active status, reinstated or readmitted, the appointed attorney shall immediately cease representing the clients of the attorney and shall return to the reinstated or readmitted attorney, or to the attorney returned to active status, such files as the appointed attorney may have received, and the appointed attorney and partners and associates shall not represent any person who was a client of the reinstated or readmitted attorney, or who was a client of an attorney returned to active status, on or before the date when he or she was placed upon inactive status, suspended, disbarred or resigned, unless the court which entered the order directing reinstatement, readmission, or return to active status shall order otherwise after written request to the court by the client whose interest is involved.

(P.B. 1978-1997, Sec. 46B.) (Amended June 24, 2002, to take effect July 1, 2003; May 1, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004.)

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Sec. 2-65. Good Standing of Attorney

An attorney is in good standing in this state if the attorney has been admitted to the bar of this state, has registered with the statewide grievance committee in compliance with Section 2-27 (d), and is not under suspension, on inactive status, disbarred, or resigned from the bar.

(P.B. 1978-1997, Sec. 46C.)

Sec. 2-66. Practice by Court Officials

(a) No lawyer who is a judge of the supreme court, appellate court or superior court shall practice law in any state or federal court.

(b) The chief public defender, the deputy chief public defender, public defenders, assistant public defenders, deputy assistant public defenders, the chief state's attorney, the deputy chief state's attorney, state's attorneys, assistant state's attorneys and deputy assistant state's attorneys who have been appointed on a full-time basis will devote their full time to the duties of their offices, will not engage in the private practice of law, either civil or criminal, and will not be connected in any way with any attorney or law firm engaged in the private practice of law.

(c) No state's attorney or assistant state's attorney, no partner or associate of a law firm of which any of the aforementioned court officials is a partner or associate, shall appear as counsel in any criminal case in behalf of any accused in any state or federal court.

(d) No chief clerk, deputy chief clerk, clerk, deputy clerk or assistant clerk who has been appointed on a full-time basis shall appear as counsel in any civil or criminal case in any state or federal court. Such persons may otherwise engage in the practice of law as permitted by established judicial branch policy.

(e) No chief public defender, deputy chief public defender, public defender, assistant public defender or deputy assistant public defender shall appear in behalf of the state in any criminal case.

(P.B. 1978-1997, Sec. 47.)

Sec. 2-67. Payment of Attorneys by Bank and Trust Companies

(a) No attorney shall directly or indirectly receive payment from any bank or trust company for legal services rendered to others in the preparation of wills, codicils or drafts of such instruments or for advising others as to legal rights under existing or proposed instruments of that character.

(b) The violation of this section by an attorney may be cause for grievance proceedings.

(P.B. 1978-1997, Sec. 48.)

Sec. 2-68. Client Security Fund Established

(a) A client security fund is hereby established to promote public confidence in the judicial system and the integrity of the legal profession by reimbursing clients, to the extent provided for by these rules, for losses resulting from the dishonest conduct of attorneys practicing law in this state in the course of the attorney-client relationship and by providing crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems.

(b) It is the obligation of all attorneys admitted to the practice of law in this state to participate in the collective effort to reimburse clients who have lost money or property as the result of the unethical and dishonest conduct of other attorneys and to provide crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems.

(c) The client security fund is provided as a public service to persons using the legal services of attorneys practicing in this state and as a means of providing crisis intervention and referral assistance to impaired attorneys. All moneys and assets of the fund shall constitute a trust.

(d) The establishment, administration and operation of the fund shall not impose or create any obligation, expectation of recovery from or liability of the fund to any claimant or attorney, and all reimbursements therefrom shall be a matter of grace and not of right.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005.)

Sec. 2-68A. —Crisis Intervention and Referral Assistance

(a) The chief court administrator may enter into any contracts and take such other action as may be reasonably necessary to provide for crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems.

(b) The crisis intervention and referral assistance shall be provided with the assistance of an advisory committee appointed by the chief court administrator that shall include one or more behavioral health professionals.

(Adopted May 3, 2005, to take effect May 17, 2005.)

Sec. 2-69. —Definition of Dishonest Conduct

(a) As used in Sections 2-68 through 2-81, inclusive, "dishonest conduct" means wrongful acts

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committed by an attorney, in an attorney-client relationship or in a fiduciary capacity arising out of an attorney-client relationship, in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value, including, but not limited to refusal to refund unearned fees received in advance as required by Rule 1.16 (d) of the Rules of Professional Conduct.

(b) ''Dishonest conduct'' does not include such wrongful acts committed in connection with the provision of investment services to the claimant by the attorney.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-70. —Client Security Fund Fee

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

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

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

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan.1, 2000; amended Nov. 17, 1999, on an interim basis pursuant to Section 1-9 (c), to take effect Jan.1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001; amended June 21, 2004, to take effect July 13, 2004; amended May 3, 2005, to take effect May 17, 2005; amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 2-71. —Eligible Claims

(a) A claim for reimbursement of a loss must be based upon the dishonest conduct of an attorney who, in connection with the defalcation upon which the claim is based, was a member of the Connecticut bar and engaged in the practice of law in this state.

(b) The claim shall not be eligible for reimbursement unless:

(1) the attorney was acting as an attorney or fiduciary in the matter in which the loss arose;

(2) the attorney has died, been adjudged incapable, not competent or insane, been disbarred or suspended from the practice of law in Connecticut, been placed on probation or inactive status by a Connecticut court, resigned from the Connecticut bar, or become the judgment debtor of the claimant with respect to such claim; and

(3) the claim is presented within four years of the time when the claimant discovered or first reasonably should have discovered the dishonest acts and the resulting losses or the claim was pending before the Connecticut Bar Association's client security fund committee as of the effective date of this rule.

(c) Except as provided by subsection (d) of this section, the following losses shall not be eligible for reimbursement:

(1) losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of the attorney causing the losses;

(2) losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) losses incurred by any financial institution which are recoverable under a ''banker's blanket bond'' or similar commonly available insurance or surety contract;

(4) losses incurred by any business entity controlled by the attorney, any person or entity described in subdivisions (c) (1), (2), or (3) herein;

(5) losses incurred by any governmental entity or agency.

(d) In cases of extreme hardship or special and unusual circumstances, the client security fund committee may, in its discretion, consider a claim eligible for reimbursement which would otherwise be excluded under these rules.

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(e) In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the client security fund committee may, in its discretion, deny the claim.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-72. —Client Security Fund Committee

(a) There is hereby established a client security fund committee which shall consist of fifteen members who shall be appointed by the chief justice. Nine of the members shall be attorneys, three shall not be attorneys and three shall be individuals who serve in one of the following capacities: superior court judge, judge trial referee, appellate court judge, supreme court justice, family support magistrate, family support referee or workers' compensation commissioner. Members shall be appointed for terms of three years, provided, however, that of the members first appointed, five shall serve for one year, five for two years and five for three years. No person shall serve as a member for more than two consecutive three year terms, excluding any appointments for less than a full term, but a member may be reappointed after a lapse of one year. The appointment of any member may be revoked or suspended by the chief justice. In connection with such revocation or suspension, the chief justice shall appoint a qualified individual to fill the vacancy for the remainder of the term or for any other appropriate period. In the event that a vacancy arises in this position before the end of a term by reason other than revocation or suspension, the chief justice shall fill the vacancy for the balance of the term or for any other appropriate period.

(b) The client security fund committee shall elect from among its members a chair and a vice-chair who shall serve for a period of one year.

(c) Seven members of the client security fund committee shall constitute a quorum at its meetings. The chair may assign individual members of the committee to investigate and report on claims to the committee.

(d) Members shall serve without compensation, but shall be reimbursed for their necessary and reasonable expenses incurred in the discharge of their duties.

(e) The client security fund committee shall operate under the supervision of the superior court judges and report on its activities to the executive committee of the superior court on at least a quarterly basis.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-73. —Powers and Duties of Client Security Fund Committee

In addition to any other powers and duties set forth in Sections 2-68 through 2-81, the client security fund committee shall:

(a) Publicize its activities to the public and bar, including filing with the chief justice and the executive committee of the superior court an annual report on the claims made and processed and the amounts disbursed.

(b) Receive, investigate and evaluate claims for reimbursement.

(c) Determine in its judgment whether reimbursement should be made and the amount of such reimbursement.

(d) Prosecute claims for restitution against attorneys whose conduct has resulted in disbursements.

(e) Employ such persons and contract with any public or private entity as may be reasonably necessary to provide for its efficient and effective operations, which shall include, but not be limited to, the investigation of claims and the prosecution of claims for restitution against attorneys.

(f) Pay to the chief court administrator for the provision of crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems, any amounts required pursuant to Section 2-77.

(g) Perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the fund.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005.)

Sec. 2-74. —Regulations of Client Security Fund Committee

The client security fund committee shall have the power and authority to implement these rules by regulations relevant to and not inconsistent with these rules. Such regulations may be adopted at any regular meeting of the client security fund committee or at any special meeting called for that purpose. The regulations shall be effective sixty days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee. A copy shall be mailed to the chief justice, the chief court administrator, and the executive committee of the superior court.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-75. —Processing Claims

(a) Upon receipt of a claim the client security fund committee shall cause an appropriate investigation to be conducted and shall cause the attorney who is the subject of the claim or the attorney's

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representative to be notified by certified mail within ten days of the filing of such claim. The attorney or his or her representative shall have twenty days from the date the notice was mailed to file a response with the client security fund committee. Before processing a claim, the client security fund committee may require the claimant to pursue other remedies he or she may have.

(b) The client security fund committee shall promptly notify the statewide grievance committee of each claim and shall request the grievance committee to furnish it with a report of its investigation, if any, on the matter. The statewide grievance committee shall allow the client security fund committee access to its records during an investigation of a claim. The client security fund committee shall evaluate whether the investigation is complete and determine whether it should conduct additional investigation or await the pendency of any disciplinary investigation or proceeding involving the same act or conduct as is alleged in the claim.

(c) The client security fund committee may, to the extent permitted by law, request and receive from the state's attorneys and from the superior court information relative to the client security fund committee's investigation, processing and determination of claims.

(d) A certified copy of an order disciplining an attorney for the same dishonest act or conduct alleged in a claim, or a final trial court judgment imposing civil or criminal liability therefor, shall be evidence that the attorney committed such dishonest act or conduct.

(e) The client security fund committee may require that a claimant, the subject attorney or any other person give testimony relative to a claim and may designate one or more members to receive the testimony and render a report thereon to the committee.

(f) The client security fund committee shall, on the basis of the record, make its determination in its sole and absolute discretion as to the validity of claims. A determination shall require an affirmative vote of at least seven members.

(g) Based upon the claims approved for reimbursement, the claims being processed and the amounts available in the client security fund, the client security fund committee shall determine in its sole and absolute discretion the amount, the order and the manner of the payment to be made on the approved claim.

(h) Reimbursements shall not include interest, expenses, or attorney's fees in processing the claim, and may be paid in a lump sum or in installments.

(i) The client security fund committee shall notify the claimant and the subject attorney of its determination, which shall be final and not be subject to review by any court.

(j) The approval or disapproval of a claim shall not be pertinent in any disciplinary proceeding.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-76. —Confidentiality

(a) Claims, proceedings and reports involving claims for reimbursement for losses caused by the dishonest conduct of attorneys are confidential until the client security fund committee authorizes a disbursement to the claimant, at which time the committee may disclose the name of the claimant, the attorney whose conduct produced the claim and the amount of the reimbursement. However, the client security fund committee may provide access to relevant information regarding such claims to the statewide grievance committee, grievance panels, to law enforcement agencies, to the office of the chief disciplinary counsel, and to a judge of the superior court. The client security fund committee may also disclose such information to any attorney retained or employed by the committee to protect the interests of the client security fund or the committee in any state or federal action in which the interests of the committee or the fund may be at issue, and may disclose such information as may be necessary to protect the rights of the committee in any action or proceeding in which the committee's right to receive restitution pursuant to Sections 2-80 or 2-81 is at issue. The client security fund committee may also provide statistical information regarding claims which does not disclose the names of claimants and attorneys until a disbursement is authorized.

(b) All information given or received in connection with the provision of crisis intervention and referral assistance under these rules shall be subject to the provisions of General Statutes § 51-81d (f).

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—-2007: In 2007, a comma was substituted for the word ''and'' in the second sentence of subsection (a), after the words ''grievance panels.'' After the words ''law enforcement agencies,'' the following was also added to the second sentence of subsection (a): '', to the office of the chief disciplinary counsel, and to a judge of the superior court. The client security fund committee may also disclose such information to any attorney retained or employed by the committee to protect the interests of the client security fund or the committee in any state or federal action in which the interests of the committee or the fund may be at issue, and may disclose such information as may be necessary to protect the rights of the

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committee in any action or proceeding in which the committee's right to receive restitution pursuant to Sections 2-80 or 2-81 is at issue.''

COMMENTARY—2007: The above changes permit disclosure of relevant information concerning claims for reimbursement for losses caused by the dishonest conduct of attorneys filed with the client security fund to the office of chief disciplinary counsel and to a judge of the superior court, in addition to the statewide grievance committee, grievance panels, and law enforcement agencies. The rule previously did not expressly permit disclosure of relevant information to the chief disciplinary counsel's office or a judge of the superior court. In addition, the amendment to the rule expressly permits the committee to provide access to relevant information to counsel retained or employed to protect the interests of the committee or the client security fund in litigation. Finally, the committee will be permitted to disclose such information as will reasonably be necessary to protect the fund's interests in proceedings or actions affecting the committee's right to receive restitution after paying a claim.

Sec. 2-77. —Review of Status of Fund

The client security fund committee shall periodically analyze the status of the fund, the approved claims and the pending claims, and the cost to the fund of providing crisis intervention and referral assistance to attorneys, to ensure the integrity of the fund for its intended purposes. Based upon the analysis and recommendation of the client security fund committee, the judges of the superior court may increase or decrease the amount of the client security fund fee and the superior court executive committee may fix a maximum amount on reimbursements payable from the fund.

The amount paid from the fund in any calendar year to the chief court administrator for the provision of crisis intervention and referral assistance to attorneys shall not exceed 15.9 percent of the amount received by the fund from payments of the client security fund fee in the prior calendar year. If less than the 15.9 percent maximum amount is paid from the fund in any calendar year for the provision of crisis intervention and referral assistance to attorneys, the remaining amount may not be carried over and added to the amount that may be paid from the fund for that purpose in any other year.

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended May 3, 2005, to take effect May 17, 2005.)

Sec. 2-78. —Attorney's Fee for Prosecuting Claim

No attorney shall accept any fee for prosecuting a claim on behalf of a claimant, except where specifically approved by the client security fund committee for payment out of the award.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

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

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

(b) If a judge, judge trial referee, state referee, family support magistrate or workers' compensation commissioner has not paid the client security fund fee, the office of the chief court administrator shall send a notice to such person that he or she

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will be referred to the judicial review council unless within sixty days from the date of such notice the office of the chief court administrator receives from such person proof that he or she has either paid the fee or is exempt from such payment. If the office of the chief court administrator does not receive such proof within the time required, it shall refer such person to the judicial review council.

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

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

(Adopted June 29, 1998, to take effect Jan. 1, 1999; amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 2-80. —Restitution by Attorney

An attorney whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the fund including interest and the expense incurred by the fund in processing the claim. An attorney's failure to make satisfactory arrangements for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-81. —Restitution and Subrogation

(a) An attorney whose dishonest conduct results in reimbursement to a claimant shall be liable to the fund for restitution; and the client security fund committee may bring such action as it deems advisable to enforce such obligation.

(b) As a condition of reimbursement, a claimant shall be required to provide the fund with a pro tanto transfer of the claimant's rights against the attorney, the attorney's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the client security fund committee as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

(d) In the event that the claimant commences an action to recover unreimbursed losses against the attorney or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the client security fund committee of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the client security fund committee undertakes to achieve restitution for the fund.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 2-82. Admission of Misconduct; Discipline by Consent

(a) The disciplinary counsel to whom a complaint is forwarded after a finding that probable cause exists that the respondent is guilty of misconduct may negotiate a proposed disposition of the complaint with the respondent or, if the respondent is represented by an attorney, with the respondent's attorney. Such a proposed disposition shall be based upon the respondent's admission of misconduct, which shall consist of either (1) an admission by the respondent that the material facts alleged in the complaint, or a portion thereof describing one or more acts of misconduct to which the admission relates, are true, or (2) if the respondent denies some or all of such material facts, an acknowledgment by the respondent that there is sufficient evidence to prove such material facts by clear and convincing evidence.

(b) If disciplinary counsel and the respondent agree to a proposed disposition of the matter, they shall place their agreement in writing and submit it, together with the complaint, the record in the matter, and the respondent's underlying admission of misconduct, for approval as follows: (i) by the court, in all matters involving possible suspension or disbarment, or possible imposition of a period of probation or other sanctions beyond the authority of the statewide grievance committee, as set forth in Section 2-37; or (ii) by a reviewing committee of the statewide grievance committee, in all other matters. If, after a hearing, the admission of misconduct is accepted and the proposed disposition is approved by the court or the reviewing committee, the matter shall be disposed of in the manner agreed to. If any resulting admission of misconduct or proposed disposition is rejected by the court or the reviewing committee, the admission of misconduct and proposed disposition shall be withdrawn, shall not be made public, and shall not be used against the respondent in any subsequent proceedings. In that event, the matter shall be referred for further proceedings to a different judicial authority or reviewing committee, as appropriate.

(c) If disciplinary counsel and the respondent are unable to agree to a proposed disposition of the matter, the respondent may nonetheless tender an admission of misconduct, which shall be

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in accordance with subsection (a) of this section. If such an admission of misconduct without proposed disposition is tendered, disciplinary counsel shall cause it to be forwarded, together with the complaint and the record in the matter, for consideration, possible acceptance and disposition as follows: (i) by the court, in all matters involving possible suspension or disbarment, or possible imposition of a period of probation or other sanctions beyond the authority of the statewide grievance committee, as set forth in Section 2-37; or (ii) by a reviewing committee of the statewide grievance committee, in all other matters. If, after a hearing, the admission of misconduct is accepted by the court or the reviewing committee, the matter shall be disposed of and any resulting imposition of discipline shall be made public in the manner prescribed by these rules. If the admission of misconduct is rejected by the court or the reviewing committee, it shall be withdrawn, shall not be made public, and shall not be used against the respondent in any subsequent proceedings. In that event, the matter shall be referred for further proceedings to a different judicial authority or reviewing committee, as appropriate.

(d) A respondent who tenders an admission of misconduct and, if applicable, enters with disciplinary counsel into a proposed disposition of the matter, shall present to the court or the reviewing committee an affidavit stating the following:

(1) That the admission of misconduct and, if applicable, the proposed disposition are freely and voluntarily submitted; that the respondent is not making the admission of misconduct and, if applicable, the proposed disposition, as a result of any threats or other coercion or duress, or any promises or other inducements not set forth in the proposed disposition; that the respondent is fully aware of the consequences of such submissions;

(2) That the respondent is aware that there is presently pending a complaint, in connection with which probable cause has been found that the respondent committed the following acts of misconduct: (list specific acts); and

(3) Either (i) that the respondent admits that the material facts alleged in the complaint, or in that portion thereof to which the respondent's admission relates, are true, or (ii) if the respondent denies some or all of such material facts, that the respondent acknowledges that there is sufficient evidence to prove such material facts by clear and convincing evidence.

(e) The disciplinary counsel may recommend dismissal of acts of misconduct alleged in the complaint that are not admitted by the respondent. The respondent's admission of some acts of misconduct shall not foreclose the disciplinary counsel from pursuing discipline based upon other acts of misconduct alleged in the complaint.

(f) Prior to acceptance by the court or the reviewing committee of the admission of misconduct, the proposed disposition of the matter, if applicable, and the imposition of any discipline, the complainant will be given the right to comment thereon.

(g) In any disciplinary proceeding where the respondent already has other disciplinary matters pending before a court, either pursuant to an order of interim suspension under Section 2-42, or pursuant to a presentment filed under Sections 2-35, 2-40, 2-41 or 2-47, the respondent and disciplinary counsel may agree to a presentment. The respondent and disciplinary counsel shall stipulate that the order of presentment is requested for the purpose of consolidating all pending disciplinary matters before the court.

(Adopted June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this section read: "(a) A respondent against whom a complaint has been filed and in connection with which probable cause has been found that the respondent is guilty of misconduct may tender a conditional admission to the complaint, or a portion thereof, to the disciplinary counsel to whom the case has been referred. The disciplinary counsel shall review the complaint and the conditional admission, shall determine the sanctions to which the respondent may be subject, and shall discuss and may negotiate a disposition of the complaint with the respondent or, if the respondent is represented by an attorney, with the respondent's attorney. The complaint, the record in the matter and the conditional admission shall be submitted to the court for approval in matters involving suspension or disbarment and to a reviewing committee of the statewide grievance committee in all other matters. If, after a hearing, the conditional admission is accepted by the court or the reviewing committee, the discipline to be imposed shall be determined by the court or reviewing committee and shall be as prescribed by these rules. If the conditional admission is not accepted by the court or the reviewing committee, it shall be withdrawn, shall not be made public and shall not be used against the respondent in any subsequent proceedings.

"(b) If a respondent has tendered to the disciplinary counsel a conditional admission to the complaint, or a portion thereof, and if the disciplinary counsel and the respondent agree to the form of discipline to be imposed, the complaint, the record in the matter, the conditional admission and the agreement concerning the form of discipline to be imposed shall be submitted to the court for approval in matters involving suspension or disbarment and to a reviewing committee of the statewide grievance committee in all other matters. If, after a hearing, the form of discipline agreed to is approved by the court or the reviewing committee, the imposition of discipline shall be made public in the manner prescribed by these rules. If the form of discipline agreed to is rejected by the court or the reviewing committee, the conditional admission and the agreement shall be withdrawn, shall not be made public and

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shall not be used against the respondent in any subsequent proceedings.

"(c) A respondent who tenders a conditional admission to the complaint and, if applicable, his or her consent to the form of discipline, shall present to the court or the reviewing committee an affidavit stating the following:

"(1) The conditional admission and, if applicable, the consent to the form of discipline are freely and voluntarily submitted; the respondent is not being subjected to coercion or duress; the respondent is fully aware of the implications of such submissions;

"(2) The respondent is aware that there is presently pending a complaint or an investigation into, or proceeding involving, allegations that there exist grounds for discipline, the nature of which shall be specifically set forth; and

"(3) The respondent acknowledges that the material facts so alleged are true.

"(d) Prior to acceptance by the court or the reviewing committee of the conditional admission and the imposition of any discipline, the complainant will be given the right to comment thereon.

"(e) The conditional admission and, if applicable, the consent to the form of discipline shall not be submitted to the judicial authority or reviewing committee before which the underlying complaint is pending."

COMMENTARY—2007: The above changes allow respondents to offer to accept discipline without having to compromise important rights and benefits that may be impacted by admitting that the material facts alleged in the complaint are true. The changes also add probation as a disciplinary remedy, clarify when matters may be filed with the courts as opposed to with the grievance committee, and allow respondents with multiple cases to agree with disciplinary counsel to consolidate all pending cases.

Sec. 2-83. Effective Dates

(a) The revisions to this chapter which are effective January 1, 2004, shall apply to all grievance complaints filed on or after that date, unless otherwise provided in these rules.

(b) The rules in effect on December 31, 2003, shall govern all grievance complaints filed on or before that date.

(Adopted June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003, and amended on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Oct. 1, 2003, and amendment adopted June 30, 2003, to take effect Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan. 1, 2004, and amended on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Jan. 1, 2004.)

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CHAPTER 3

APPEARANCES

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 3-1. Appearance for Plaintiff on Writ or Complaint in Civil and Family Cases

When a writ has been signed by an attorney at law admitted to practice in the courts of this state, such writ shall contain the attorney's name, juris number, mailing address, and telephone number, all of which shall be typed or printed on the writ, and the attorney's appearance shall be entered for the plaintiff, unless such attorney by endorsement on the writ shall otherwise direct, or unless such attorney shall type or print on the writ the name, address, juris number and telephone number of the professional corporation or firm, of which such attorney shall be a member, entering its appearance for the plaintiff. The signature on the complaint of any person proceeding without the assistance of counsel pursuant to Section 8-1 shall be deemed to constitute the appearance pro se of such party.

(P.B. 1978-1997, Sec. 64 (a).)

Sec. 3-2. Time to File Appearance

(a) After the writ has been filed the attorney for any party to any action, or any party himself or herself, may enter his or her appearance in writing with the clerk of the court location to which such action is returnable. Except where otherwise prescribed herein or by statute, an appearance for a party in a civil or family case should be filed on or before the second day following the return day. Appearances filed thereafter in such cases shall be accepted but an appearance for a party after the entry against such party of a nonsuit or judgment after default for failure to appear shall not affect the entry of the nonsuit or any judgment after default.

(b) An appearance in a criminal case or in a juvenile matter should be filed promptly but may be filed at any stage of the proceeding.

(P.B. 1978-1997, Sec. 64 (b); see also Secs. 66, 630, 1056.1.)

Sec. 3-3. Form and Signing of Appearance

Each appearance shall (1) be typed or printed on size 8-1/2'' x 11'' paper, (2) be headed with the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual's own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto if any, the mailing address and the telephone number. This section shall not apply to appearances entered pursuant to Section 3-1.

(P.B. 1978-1997, Sec. 64 (b).)

Sec. 3-4. Filing Appearance with the Clerk—Copies

Appearances shall be filed with the clerk of the court location where the matter is pending. Whenever an appearance is filed in any civil or family action returnable to a judicial district of the superior court, only an original need be filed and the clerk with whom it is filed shall cause notice thereof to be given to all other counsel and pro se parties of record in the action. Whenever an appearance is filed in any criminal case or juvenile matter, only the original need be filed. Whenever an appearance is filed in any civil action returnable

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to a geographical area of the superior court, an original and sufficient copies for each party to the action must be filed. This section shall not apply to appearances entered pursuant to Section 3-1.

(P.B. 1978-1997, Sec. 64 (c); see also Secs. 630, 1056.1.) (P.B. 1998.)

Sec. 3-5. Service of Appearances on Other Parties—When Required

(a) In summary process actions the attorney for the defendant or, if there is no such attorney, the defendant himself or herself, in addition to complying with Section 3-4, shall mail or deliver a copy of the appearance to the attorney for the plaintiff or, if there is no such attorney, to the plaintiff himself or herself.

(b) In delinquency and family with service needs proceedings, such attorney shall mail or deliver a copy of the appearance to the juvenile prosecutor; in other juvenile proceedings, such attorney shall mail or deliver a copy of the appearance to the attorney for the petitioner and to all other attorneys and pro se parties.

(c) In criminal cases the attorney for the defendant shall mail or deliver a copy of the appearance to the prosecuting authority.

(d) Service of such appearances shall be made in accordance with Sections 10-12 through 10-17. Proof of service shall be endorsed on the appearance filed with the clerk.

(See Secs. 64 (c), 630, 1056.1, P.B.1978-1997.) (P.B. 1998.)

Sec. 3-6. Appearances for Bail or Detention Hearing Only

(a) An attorney, prior to the entering of an appearance by any other attorney, may enter an appearance for the defendant in a criminal case for the sole purpose of representing the defendant at a hearing for the fixing of bail. Such appearance shall be in writing and shall be styled, ''for the purpose of the bail hearing only.'' Upon entering such an appearance, that attorney shall be entitled to confer with the prosecuting authority in connection with the bail hearing.

(b) An attorney may enter an appearance in a delinquency proceeding for the sole purpose of representing the respondent at any detention hearing; such appearance shall be in writing and styled ''for the purpose of detention hearing only.''

(See Sec. 633, P.B.1978-1997.) (P.B. 1998.)

Sec. 3-7. Consequence of Filing Appearance

(a) Except by leave of the judicial authority, no attorney shall be permitted to appear in court or to be heard in behalf of a party until the attorney's appearance has been entered. No attorney shall be entitled to confer with the prosecuting authority as counsel for the defendant in a criminal case until the attorney's appearance has been so entered.

(b) After the filing of an appearance the attorney or pro se party shall receive copies of all notices required to be given to parties by statute or by these rules.

(c) The filing of an appearance by itself shall not waive the right to attack defects in jurisdiction or any claimed violation of constitutional rights.

(See also Secs. 630, 631, 1056.1, P.B.1978-1997.) (P.B. 1998.)

Sec. 3-8. Appearance for Represented Party

Whenever an attorney files an appearance for a party, or the party files an appearance for himself or herself, and there is already an appearance of an attorney or party on file for that party, the attorney or party filing the new appearance shall state thereon whether such appearance is in place of or in addition to the appearance or appearances already on file. If the new appearance is stated to be in place of any appearance or appearances on file, the party or attorney filing that new appearance shall serve, in accordance with Sections 10-12 through 10-17, a copy of that new appearance on any attorney or party whose appearance is to be replaced by the new appearance. Unless a written objection is filed within ten days after the filing of an in-lieu-of appearance, the appearance or appearances to be replaced by the new appearance shall be deemed to have been withdrawn and the clerk shall make appropriate entries for such purpose on the file and docket. The provisions of this section regarding parties filing appearances for themselves does not apply to criminal cases.

(P.B. 1978-1997, Sec. 65.)

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 failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney or party in accordance with Section 3-8.

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

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time of the application. Such an application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

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

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

(e) All appearances in juvenile matters shall be deemed to continue during the period of delinquency or family with service needs probation or supervision, or during the period of any commitment or protective supervision or during the period until final adoption following termination of parental rights; however, in the absence of a specific request, no attorney appointed in a prior proceeding shall automatically continue to represent the parent for any subsequent petition to terminate parental rights. The attorney shall represent the client in connection with appeals, subject to Section 35-4 (b), and with petitions for extensions, 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.

(P.B. 1978-1997, Sec. 77.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the words ''or civil union'' were inserted in the first sentence of subsection (c) after the phrase ''seeking a dissolution of marriage.''

COMMENTARY—2007: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.

Sec. 3-10. Motion to Withdraw Appearance

(a) No motion for withdrawal of appearance shall be granted unless good cause is shown and until the judicial authority is satisfied that reasonable notice has been given to other attorneys of record and that the party represented by the attorney was served with the motion and the notice required by this section or that the attorney has made reasonable efforts to serve such party. All motions to withdraw appearance shall be set down for argument and when the attorney files such motion he or she shall obtain such argument date from the clerk.

(b) In civil and family cases a motion to withdraw shall include the last known address of any party as to whom the attorney seeks to withdraw his or her appearance and shall have attached to it a notice to such party advising of the following: (1) the attorney is filing a motion which seeks the court's permission to no longer represent the party in the case; (2) the date and time the motion will be heard; (3) the party may appear in court on that date and address the court concerning the motion; (4) if the motion to withdraw is granted, the party should either obtain another attorney or file an appearance on his or her own behalf with the court; and (5) if the party does neither, the party will not receive notice of court proceedings in the case and a nonsuit or default judgment may be rendered against such party.

(c) In criminal and juvenile matters, the motion to withdraw shall comply with subsections (b)(1), (2) and (3) of this section and the client shall also be advised by the attorney that if the motion to withdraw is granted the client should request court appointed counsel, obtain another attorney or file an appearance on his or her own behalf with the court and be further advised that if none is done, there may be no further notice of proceeding and the court may act.

(d) In addition to the above, each motion to withdraw appearance and each notice to the party or parties who are the subject of the motion shall state whether the case has been assigned for pretrial or trial and, if so, the date so assigned.

(e) The attorney's appearance for the party shall be deemed to have been withdrawn upon the granting of the motion without the necessity of filing a withdrawal of appearance.

(P.B. 1978-1997, Sec. 77 (d).) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 25, 2001, to take effect Jan. 1, 2002; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 3-11. Appearance for Several Parties

Where there are several plaintiffs or defendants the appearance shall state specifically either that it is for all or that it is for certain specified parties; otherwise the appearance shall not be entered by the clerk.

(P.B. 1978-1997, Sec. 76.)

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Sec. 3-12. Change in Name, Composition or Membership of a Firm or Professional Corporation

(a) Whenever the appearance of a firm or professional corporation (hereinafter collectively referred to as "unit") has been entered upon the record of the court and there is a change in the name, composition or membership of such unit, it shall be the duty of such unit forthwith to notify, in writing, the director of court operations of the judicial branch, giving the name, mailing address and telephone number of the successor firm, professional corporation or individual who will continue the major portion of such unit's business. In court locations having access to the automated roll of attorneys, upon receipt of such notice the appearance of such successor will be automatically entered in lieu of the appearance of the former unit in all pending cases. In other court locations, unless such successor unit files a notice to the clerks pursuant to Section 2-26 or withdraws its appearance under the provisions of Section 3-10, the former unit's original appearance shall remain on file in each case in which it had been entered and the clerk may rely on the information contained therein for the purpose of giving notice to such unit regarding court activities involving the cases in which the unit remains active.

(b) In each case where such successor will no longer represent the party or parties for whom the original unit had entered an appearance, it is the duty of the new attorney who will represent such party or parties to enter an appearance, and it is the duty of the successor firm, professional corporation or individual to withdraw such unit's appearance under the provisions of Section 3-10.

(P.B. 1978-1997, Sec. 78.)

Sec. 3-13. When Creditor May Appear and Defend

In any action in which property has been attached, any person may appear and defend in the name of the defendant, upon filing in the court an affidavit that he or she is a creditor of the defendant and has good reason to believe, and does believe, that the amount which the plaintiff claims was not justly due at the commencement of the suit and that he or she is in danger of being defrauded by a recovery by the plaintiff, and upon giving bond with surety to the plaintiff, in such amount as the judicial authority approves, for the payment of such costs as the plaintiff may thereafter recover. If the plaintiff recovers the whole claim, costs shall be taxed against the defendant to the time of the appearance of such creditor, and for the residue of the costs such creditor shall be liable upon his or her bond; if only a part of the plaintiff's claim is recovered, the whole costs shall be taxed against the defendant, and the creditor shall not be liable for the same; if judgment is rendered in favor of the defendant, costs shall be taxed in his or her favor against the plaintiff, but the judicial authority may order that the judgment and execution therefor shall belong to such creditor. No creditor so appearing shall be permitted to file a motion to dismiss, or to plead or give in evidence the statute of limitations, or to plead that the contract was not in writing according to the requirements of the statute, or to plead any other statutory defense consistent with the justice of the plaintiff's claim. (See General Statutes § 52-86 and annotations.)

(P.B. 1978-1997, Sec. 79.)

Sec. 3-14. Legal Interns

An eligible legal intern may, under supervision by a member of the Connecticut bar as provided in Section 3-15, appear in court with the approval of the judicial authority or before an administrative tribunal, subject to its permission, on behalf of any person, if that person has indicated in writing his or her consent to the intern's appearance and the supervising attorney has also indicated in writing approval of that appearance.

(P.B. 1978-1997, Sec. 68.)

Sec. 3-15. —Supervision of Legal Interns

The member of the bar under whose supervision an eligible legal intern does any of the things permitted by these rules shall:

(1) be an attorney who has been admitted to the Connecticut bar for at least three years, or one who is employed by an attorney of five years' standing, or one who is employed by an accredited law school in Connecticut, or one who is approved as a supervising attorney by the presiding judge in the case at bar;

(2) assume personal professional responsibility for the intern's work;

(3) assist the intern in his or her preparation to the extent the supervising attorney considers necessary;

(4) be present in court with the intern.

(P.B. 1978-1997, Sec. 69.)

Sec. 3-16. —Requirements and Limitations

(a) In order to appear pursuant to these rules, the legal intern must:

(1) be certified by a law school approved by the American Bar Association or by the state bar examining committee of the superior court;

(2) have completed legal studies amounting to at least two semesters of credit, or the equivalent if the school is on some basis other than a semester basis except that the dean may certify a student

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under this section who has completed less than two semesters of credit or the equivalent to enable that student to participate in a faculty supervised law school clinical program;

(3) be certified by the dean of his or her law school as being of good character and competent legal ability;

(4) be introduced to the court in which he or she is appearing by an attorney admitted to practice in that court;

(5) comply with the provisions of Section 3-21 if enrolled in a law school outside the state of Connecticut.

(b) A legal intern may not be employed or compensated directly by a client for services rendered. This section shall not prevent an attorney, legal aid bureau, law school, public defender agency or the state from compensating an eligible intern.

(P.B. 1978-1997, Sec. 70.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 3-17. —Activities of Legal Intern

(a) The legal intern, supervised in accordance with these rules, may appear in court or at other hearings in the following situations:

(1) where the client is financially unable to afford counsel; or

(2) where the intern is assisting a privately retained attorney; or

(3) where the intern is assisting an established legal aid bureau or organization, a public defender or prosecutor's office, or a state agency.

(b) In each case, the written consent and approval referred to in Section 3-14 shall be filed in the record of the case and shall be brought to the attention of the judicial authority or the presiding officer of the administrative tribunal.

(c) In addition, an intern may, under the supervision of a member of the bar:

(1) prepare pleadings and other documents to be filed in any matter;

(2) prepare briefs, abstracts and other documents.

(d) Each document or pleading must contain the name of the intern who participated in drafting it and must be signed by the supervising attorney.

(P.B. 1978-1997, Sec. 71.)

Sec. 3-18. —Certification of Intern

The certification of an intern by the law school dean:

(1) shall be filed with the clerk of the superior court in Hartford and, unless it is sooner withdrawn, shall remain in effect until the announcement of the results of the second Connecticut bar examination following the intern's graduation. For any intern who passes that examination, the certification shall continue in effect until the date of admission to the bar.

(2) shall terminate if the intern, prior to graduation, is no longer duly enrolled in an accredited law school.

(3) may be terminated by the dean at any time by mailing a notice to that effect to the clerk of the superior court in Hartford and to the intern. It is not necessary that the notice to the superior court state the cause for termination.

(4) may be terminated by the superior court at any time upon notice to the intern, to the dean and to the superior court in Hartford.

(P.B. 1978-1997, Sec. 72.)

Sec. 3-19. —Legal Internship Committee

There shall be established a legal internship committee appointed by the chief justice and composed of four judges, four practicing attorneys, three law professors, and three law students. This committee shall consult with the deans of law schools located in Connecticut, review the progress of the legal internship program, and consider any complaints or suggestions regarding the program.

(P.B. 1978-1997, Sec. 73.)

Sec. 3-20. —Unauthorized Practice

Nothing contained in these rules shall affect the right of any person who is not admitted to the practice of law to do anything that he or she might lawfully do prior to their adoption, nor shall they enlarge the rights of persons, not members of the bar or legal interns covered by these rules, to engage in activities customarily considered to be the practice of law.

(P.B. 1978-1997, Sec. 74.)

Sec. 3-21. —Out-of-State Interns

A legal intern who is certified under a legal internship program or student practice rule in another state or in the District of Columbia may appear in a court or before an administrative tribunal of Connecticut under the same circumstances and on the same conditions as those applicable to certified Connecticut legal interns, if the out-of-state intern files with the clerk of the superior court in Hartford, with a copy to the legal internship committee, a certification by the dean of his or her law school of his or her admission to internship or student practice in that state or in the District of Columbia, together with the text of that state's or the District of Columbia's applicable statute or rule governing such admissions.

(P.B. 1978-1997, Sec. 75.)

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CHAPTER 4

PLEADINGS

Sec.
4-1. Form of Pleading
4-2. Signing of Pleading
4-3. Filing and Endorsing Pleadings
4-4. Electronic Filing
4-5. Notice Required for Ex Parte Temporary Injunctions
4-6. Page Limitations for Briefs

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 4-1. Form of Pleading

(a) All papers shall be typed or printed on size 8-1/2'' x 11'' paper and shall have no back or cover sheet. Those subsequent to the complaint shall be headed with the title and number of the case, the name of the court, and the date and designation of the particular pleading, in conformity with the applicable form in the rules of practice which is set forth in the Appendix of Forms in this volume.

(b) At the bottom of the first page of each paper, a blank space of approximately two inches shall be reserved for notations of receipt or time of filing by the clerk and for statements by counsel pursuant to Section 11-18 (a) (2), and at the top of each page a blank space of two inches shall be reserved. Papers shall be punched with two holes two and twelve-sixteenths inches apart, each centered seven-sixteenths of an inch from the upper edge, one being two and fourteen-sixteenths inches from the left-hand edge and the other being the same distance from the right-hand edge, and each four-sixteenths of an inch in diameter.

(c) The clerk may require a party to correct any filed paper which is not in compliance with this section by substituting a paper in proper form.

(d) This section shall not apply to forms supplied by the judicial branch.

(P.B. 1978-1997, Sec. 118.) (Amended Aug. 24, 2001, to take effect Jan. 1, 2002.)

Sec. 4-2. Signing of Pleading

(a) Every pleading and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign his or her pleadings and other papers. The name of the attorney or party who signs such document shall be legibly typed or printed beneath the signature.

(b) The signing of any pleading, motion, objection or request shall constitute a certificate that the signer has read such document, that to the best of the signer's knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. Each pleading and every other court-filed document signed by an attorney or party shall set forth the signer's telephone number and mailing address.

(P.B. 1978-1997, Sec. 119.)

Sec. 4-3. Filing and Endorsing Pleadings

All pleadings, written motions, and papers in pending cases shall be filed with and kept by the clerk of the court, who shall endorse upon each the time when it is filed, and make a like entry upon the clerk's docket and the file.

(P.B. 1978-1997, Sec. 127.)

Sec. 4-4. Electronic Filing

Papers may be filed, signed, or verified by electronic means that comply with procedures and technical standards established by the office of the chief court administrator. A paper filed by electronic means in compliance with such procedures and standards constitutes a written paper for the purpose of applying these rules.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 4-5. Notice Required for Ex Parte Temporary Injunctions

(a) No temporary injunction shall be granted without notice to each opposing party unless the applicant certifies one of the following to the court in writing:

(1) facts showing that within a reasonable time prior to presenting the application the applicant gave notice to each opposing party of the time when and the place where the application would be presented and provided a copy of the application; or

(2) the applicant in good faith attempted but was unable to give notice to an opposing party or parties, specifying the efforts made to contact such party or parties; or

(3) facts establishing good cause why the applicant should not be required to give notice to each opposing party.

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(b) When an application for a temporary injunction is granted without notice or without a hearing, the court shall schedule an expeditious hearing as to whether the temporary injunction should remain in effect. Any temporary injunction which was granted without a hearing shall automatically expire thirty days following its issuance, unless the court, following a hearing, determines that said injunction should remain in effect.

(c) For purposes of this rule, notice to the opposing party means notice to the opposing party's attorney if the applicant knows who the opposing party's attorney is; if the applicant does not know who the opposing party's attorney is, notice shall be given to the opposing party. If the temporary injunction is sought against the state of Connecticut, a city or town, or an officer or agency thereof, notice shall be given to the attorney general or to the city or town attorney or corporation counsel, as the case may be.

(d) This section shall not apply to applications for relief from physical abuse filed pursuant to General Statutes § 46b-15 or to motions for orders of temporary custody in juvenile matters filed pursuant to General Statutes § 46b-129.

(Adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 4-6. Page Limitations for Briefs

The text of any trial brief or any other brief concerning a motion in any case shall not exceed thirty-five pages without permission of the judicial authority. The judicial authority may also permit the filing of a supplemental brief of a particular number of pages. The text of any brief shall be double-spaced and the type font shall be no smaller than 12 point. The judicial authority may in its discretion limit the number of pages of any brief to less than thirty-five.

(Adopted June 26, 2000, to take effect Jan. 1, 2001.)

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CHAPTER 5

TRIALS

Sec.
5-1. Trial Briefs
5-2. Raising Questions of Law Which May Be the Subject of an Appeal
5-3. Administering Oath
5-4. Examination of Witnesses
5-5. Objections to Evidence; Interlocutory Questions; Exceptions Not Required
5-6. Reception of Evidence Objected to
5-7. Marking Exhibits
5-8. Interlocutory Matters
5-9. Citation of Opinion Not Officially Published
5-10. Sanctions for Counsel's Failure to Appear

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 5-1. Trial Briefs

The parties may, as of right, or shall, if the judicial authority so orders, file, at such time as the judicial authority shall determine, written trial briefs discussing the issues in the case and the factual or legal basis upon which they ought to be resolved.

(P.B. 1978-1997, Sec. 285A.)

Sec. 5-2. Raising Questions of Law Which May Be the Subject of an Appeal

Any party intending to raise any question of law which may be the subject of an appeal must either state the question distinctly to the judicial authority in a written trial brief under Section 5-1 or state the question distinctly to the judicial authority on the record before such party's closing argument and within sufficient time to give the opposing counsel an opportunity to discuss the question. If the party fails to do this, the judicial authority will be under no obligation to decide the question.

(See Secs. 877, 285A, P.B.1978-1997.)(P.B. 1998.)

Sec. 5-3. Administering Oath

The oath or affirmation shall be administered deliberately and with due solemnity, as the witness takes the stand. The reporter shall note by whom it was administered.

(P.B. 1978-1997, Sec. 286.)

Sec. 5-4. Examination of Witnesses

The counsel who commences the examination of a witness, either in chief or on cross- examination, must alone conduct it; and no associate counsel will be permitted to interrogate the witness, except by permission of the judicial authority.

(P.B. 1978-1997, Secs. 287, 875.)

Sec. 5-5. Objections to Evidence; Interlocutory Questions; Exceptions Not Required

Whenever an objection to the admission of evidence is made, counsel shall state the grounds upon which it is claimed or upon which objection is made, succinctly and in such form as he or she desires it to go upon the record, before any discussion or argument is had. Argument upon such objection or upon any interlocutory question arising during the trial of a case shall not be made by either party unless the judicial authority requests it and, if made, must be brief and to the point.

(P.B. 1978-1997, Secs. 288, 850A.)

Sec. 5-6. Reception of Evidence Objected to

Whenever evidence offered upon trial is objected to as inadmissible, the judicial authority or committee trying such case shall not admit such evidence subject to the objection, unless both parties agree that it be so admitted; but, if either party requests a decision, such judicial authority or committee shall pass upon such objection and admit or reject the testimony. (See General Statutes § 52-208 and annotations.)

(P.B. 1978-1997, Sec. 289.)

Sec. 5-7. Marking Exhibits

Unless otherwise ordered by the judicial authority, the clerk shall mark all exhibits not marked in advance of trial and shall keep a list of all exhibits marked for identification or received in evidence during the course of the trial.

(P.B. 1978-1997, Sec. 291.)

Sec. 5-8. Interlocutory Matters

No more than one counsel on each side shall be heard on any question of evidence, or upon any interlocutory motion or motion to dismiss, without permission of the judicial authority.

(P.B. 1978-1997, Sec. 293.)

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Sec. 5-9. Citation of Opinion Not Officially Published

An opinion which is not officially published may be cited before a judicial authority only if the person making reference to it provides the judicial authority and opposing parties with copies of the opinion.

(P.B. 1978-1997, Sec. 294.)

Sec. 5-10. Sanctions for Counsel's Failure to Appear

Counsel who fails to appear on a scheduled date for any hearing or trial or who requests a continuance without cause or in any other way delays a case unnecessarily will be subject to sanctions pursuant to General Statutes § 51-84.

(P.B. 1978-1997, Sec. 983.)

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CHAPTER 6

JUDGMENTS

Sec.
6-1. Statement of Decision; When Required
6-2. Judgment Files; Captions and Contents
6-3. —Preparation; When; By Whom; Filing
6-4. —Signing of Judgment File
6-5. —Notation of Satisfaction

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 6-1. Statement of Decision; When Required

(a) The judicial authority shall state its decision either orally or in writing, in all of the following: (1) in rendering judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of execution, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Sections 41-8 through 41-11, (4) in ruling on motions to suppress under Sections 41-12 through 41-17, (5) in granting a motion to set aside a verdict under Sections 16-35 through 16-38, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under General Statutes § 52-263, including those that do not terminate the proceedings. The judicial authority's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by a court reporter and, if there is an appeal, the trial judge shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed in the trial court clerk's office.

This section does not apply in small claims actions and to matters listed in subsection (b).

(b) In any uncontested matter where no aspect of the matter is in dispute, in a pendente lite family relations matter whether contested or uncontested, or in any dismissal under Section 14-3, the oral or written decision as provided in subsection (a) is not required, except as provided in subsection (c). The clerk of the trial court shall, however, promptly notify the trial judge of the filing of the appeal.

(c) Within twenty days from the filing of an appeal from a contested pendente lite order or from a dismissal under Section 14-3 in which an oral or written decision has not been made pursuant to subsection (b), each party to the appeal shall file a brief with the trial court discussing the legal and factual issues in the matter. Within twenty days after the briefs have been filed by the parties, the judicial authority shall file a written memorandum of decision stating the factual basis for its decision on the issues in the matter and its conclusion as to each claim of law raised by the parties.

(P.B. 1978-1997, Sec. 334A.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 6-2. Judgment Files; Captions and Contents

The name and residence of every party to the action, at the date of judgment, must be given in the caption of every judgment file. In the captions of pleas, answers, etc., the parties may be described as John Doe v. Richard Roe et al., but this will not be sufficient in a judgment file, which must give all the data necessary for use in drawing any execution that may be necessary. All judgment files in actions for dissolution of marriage or civil union, legal separation and annulment shall state the date and place, including the city or town, of the marriage and the jurisdictional facts as found by the judicial authority upon the hearing.

(P.B. 1978-1997, Sec. 336.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the words "or civil union" were inserted in the third sentence after the phrase "dissolution of marriage."

COMMENTARY—2007: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.

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

(a) Judgment files in civil, criminal, family and juvenile cases shall be prepared when: (1) an appeal is taken; (2) a party requests in writing that the judgment be incorporated into a judgment file; (3) a judgment has been entered involving the granting of a dissolution of marriage or civil union, a legal separation, an annulment, injunctive relief, or title to property (including actions to quiet title but excluding actions of foreclosure), except in

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those instances where judgment is entered in such cases pursuant to Section 14-3 and no appeal has been taken from the judicial authority's judgment; (4) a judgment has been entered in a juvenile matter involving neglect, uncared for, dependent, termination, commitment of a delinquent child or commitment of a child from a family with service needs; (5) in criminal cases, sentence review is requested; or (6) ordered by the judicial authority.

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

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

(P.B. 1978-1997, Sec. 337.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the words ''or civil union'' were inserted in subdivision (3) of subsection (a), after the phrase ''dissolution of marriage.''

COMMENTARY—2007: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.

Sec. 6-4. —Signing of Judgment File

(a) Except as hereinafter provided, the judgment file, where it is necessary that it be prepared pursuant to Section 6-3, shall be signed by the clerk or assistant clerk unless otherwise ordered by the judicial authority.

(b) In all actions involving dissolution of marriage or civil union where counsel have appeared for both the plaintiff and the defendant, unless the judicial authority shall order otherwise, counsel for the parties shall endorse their approval of the judgment file immediately below the line for the subscribing authority in the following words: "I hereby certify that the foregoing judgment file conforms to the judgment entered by the court"; the clerk or assistant clerk, after ascertaining that the terms of the judgment have been correctly incorporated into the judgment file, may sign any judgment file so endorsed.

(c) In those cases in which there is no provision in this section for a clerk to sign a judgment file and in which a case has been tried and judgment has been directed in open court or by memorandum of decision and the trial judge shall die or become incapacitated before the judgment file is signed, any judge holding such court may examine the docket and file and, if it appears therefrom that the issues have been definitely decided and that the only thing remaining to be done is the signing of the judgment file, the judgment file may be drawn up by that judge or under that judge's direction and signed by him or her.

(d) Whenever a clerk or assistant clerk signs a judgment file, the signer's name shall be legibly typed or printed beneath such signature.

(P.B. 1978-1997, Sec. 338.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the words ''or civil union'' were inserted in subsection (b) after the phrase ''dissolution of marriage.''

COMMENTARY—2007: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.

Sec. 6-5. —Notation of Satisfaction

When the judgment is satisfied in a civil action, the party recovering the judgment shall file written notice thereof with the clerk, who shall endorse judgment satisfied on the judgment file, if there is one, and make a similar notation on the file and docket sheet, giving the name of the party and the date. An execution returned fully satisfied shall be deemed a satisfaction of judgment and the notice required in this section shall not be filed. The judicial authority may, upon motion, make a determination that the judgment has been satisfied.

(P.B. 1978-1997, Sec. 339.) (Amended June 25, 2001, to take effect Jan. 1, 2002; amended June 30, 2003, to take effect Jan. 1, 2004.)

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CHAPTER 7

CLERKS; FILES AND RECORDS

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7-20. Records of Short Calendar Matters
7-21. Removing Exhibits and Other Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 7-1. Dockets; Clerk's Records

The clerk shall keep a record of all pending cases, including applications and petitions made to the court, together with a record of each paper filed and order made or judgment rendered therein, with the date of such filing, making or rendition. Duplicates of these records shall be kept with the original file in the case.

(P.B. 1978-1997, Sec. 250.)

Sec. 7-2. General Duties of Clerk

The clerk at each court location shall receive files, processes and documents, make records of all proceedings required to be recorded, have the custody of the files and records of the court location except those sent to the records center, make and certify true copies of the files and records at the court location of which each is the clerk, make and keep dockets of causes therein, issue executions on judgments and perform all other duties imposed on such clerks by law. Each such clerk shall collect and receive all fines and forfeitures imposed or decreed by the court, including fines paid after commitment. (See General Statutes § 51-52 and annotations.)

(P.B. 1978-1997, Sec. 395.)

Sec. 7-3. Financial Accounts

The clerk shall make and keep adequate accounts showing all receipts and disbursements. Records of such accounts shall be retained for such period as determined by the chief court administrator.

(P.B. 1978-1997, Sec. 396.)

Sec. 7-4. Daybook

The clerk shall keep daybooks in which to enter each case on the date upon which the matter is filed on a docket of the court location. Each entry shall state the first named plaintiff and the first named defendant, unless otherwise prohibited by statute or ordered by the judicial authority, the date of filing and the number assigned to the case. Daybooks shall be retained for a period determined by the chief court administrator.

(P.B. 1978-1997, Sec. 397.)

Sec. 7-4A. Identification of Cases

Except as otherwise required by statute, every case filed in the superior court shall be identified as existing in the records of the court by docket number and by the names of the parties, and this information shall be available to the public.

(Adopted May 14, 2003, to take effect July 1, 2003.)

COMMENTARY—2003: In all cases brought, the records of the clerk's office shall reflect a docket number and names of the parties involved. This information shall be available to any member of the public who shall request such information. The names of the parties reflected in the records of the clerk's office shall reflect the true identity of the parties unless permission has been granted for use of a pseudonym pursuant to Section 11-20A. If a motion for use of a pseudonym is granted, then the records of the clerk's office shall reflect that pseudonym.

Sec. 7-4B. Motion to File Record under Seal

(a) As used in this section, ''record'' means any affidavit, document, or other material.

(b) A party filing a motion requesting that a record be filed under seal or that its disclosure be limited shall lodge the record with the court

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pursuant to Section 7-4C when the motion is filed, unless the judicial authority, for good cause shown, orders that the record need not be lodged. The motion must be accompanied by an appropriate memorandum of law to justify the sealing or limited disclosure.

(c) If necessary to prevent disclosure, the motion, any objection thereto, and any supporting records must be filed in a public redacted version and lodged in a nonredacted version conditionally under seal.

(d) If the judicial authority denies the motion to seal or to limit disclosure, the clerk shall either (1) return the lodged record to the submitting party and shall not place it in the court file or (2) upon written request of the submitting party retain the record as a lodged record so that in the event the submitting party appeals the denial of the motion, the lodged record can be part of the record on appeal of the final judgment in the case. In the latter event or if the judicial authority grants the motion, the clerk shall follow the procedure set forth in Section 7-4C (e). If the lodged record is retained pursuant to (2) above, the clerk shall return it to the submitting party or destroy it upon the expiration of the appeal period if no appeal has been filed.

(Adopted May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005.)

COMMENTARY—2003: Sections 7-4B and 7-4C are necessary to provide a uniform procedure for the filing of motions to seal records and the processing of such motions by the clerks. These rules are based on Rule 243.2 of the California Rules of Court.

HISTORY—2005: In 2005, the words ''or limited disclosure'' were added to the end of subsection (b).

COMMENTARY—2005: The above change made the rule internally consistent.

Sec. 7-4C. Lodging a Record

(a) A ''lodged'' record is a record that is temporarily placed or deposited with the court but not filed.

(b) A party who moves to file a record under seal or to limit its disclosure shall put the record in a manila envelope or other appropriate container, seal the envelope or container, and lodge it with the court.

(c) The party submitting the lodged record must affix to the envelope or container a cover sheet that contains the case caption and docket number, the words ''Conditionally Under Seal,'' the name of the party submitting the record and a statement that the enclosed record is subject to a motion to file the record under seal.

(d) Upon receipt of a record lodged under this section, the clerk shall note on the affixed cover sheet the date of its receipt and shall retain but not file the record unless the court orders it filed.

(e) If the judicial authority grants the motion to seal the record or to limit its disclosure, the clerk shall prominently place on the envelope or container the words ''SEALED BY ORDER OF THE COURT ON (DATE)'' or ''DISCLOSURE LIMITED BY ORDER OF THE COURT ON (DATE),'' as appropriate, and shall affix to the envelope or container a copy of the court's order and the public redacted version of the motion. If the judicial authority denies the motion and the submitting party requests in writing that the record be retained as a lodged record, the clerk shall prominently place on the envelope or container the words ''MOTION DENIED, RETAIN AS LODGED RECORD'' and shall affix to the envelope or container a copy of the court's order and the public redacted version of the motion.

(Adopted May 14, 2003, to take effect July 1, 2003.)

Sec. 7-5. Notice to Attorneys and Pro Se Parties

The clerk shall give notice to the attorneys of record and pro se parties unless otherwise provided by statute or these rules, of all judgments, nonsuits, defaults, decisions, orders and rulings unless made in their presence. The clerk shall record in the court file the date of the issuance of the notice.

(P.B. 1978-1997, Sec. 398.)

Sec. 7-6. Filing of Papers

No document in any case shall be filed by the clerk unless it has been signed by counsel or a pro se party and contains the title of the case to which it belongs, the docket number assigned to it by the clerk and the nature of the document. The document shall contain a certification of service in accordance with Sections 10-12 through 10-17, and, if required by Section 11-1, a proper order and order of notice if one or both are necessary.

(P.B. 1978-1997, Sec. 399.)

Sec. 7-7. Custody of Files

Clerks will not permit files, records, transcripts, or exhibits to be taken from their offices, except for use in the courtroom or upon order of a judicial authority. No person shall take any file from the custody of the clerk or from the courtroom without the express authority of a judicial authority or a clerk of the court and unless a proper receipt is given to the clerk on a form prescribed by the office of the chief court administrator.

(P.B. 1978-1997, Sec. 400.)

Sec. 7-8. Lost File or Pleading

If any file or pleading be mislaid, lost or destroyed the clerk may permit the original duplicate or a sworn copy to be substituted therefor in

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the files, and such substitution shall be certified by the clerk thereon.

(P.B. 1978-1997, Sec. 402.)

Sec. 7-9. Completing Records

The clerk may, when so directed by a judicial authority, make up, amend and complete any imperfect or unfinished record in such manner as the judicial authority may direct. (See General Statutes § 51-52a (b).)

(P.B. 1978-1997, Sec. 403.)

Sec. 7-10. Retention and Destruction of Files and Records; Withdrawals, Dismissals, Satisfactions of Judgment

The files in all civil, family and juvenile actions, including summary process and small claims, which, before a final judgment has been rendered on the issues, have been terminated by the filing of a withdrawal or by a judgment of dismissal or nonsuit when the issues have not been resolved on the merits or upon motion by any party or the court, or in which judgment for money damages only has been rendered and a full satisfaction of such judgment has been filed, may be destroyed upon the expiration of one year after such termination or the rendition of such judgment.

(P.B. 1978-1997, Sec. 403B.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 7-11. —Judgments on the Merits—Stripping and Retention

(a) With the exception of actions which affect the title to land and actions which have been disposed of pursuant to Section 7-10, the files in civil, family and juvenile actions in which judgment has been rendered may be stripped and destroyed pursuant to the schedule set forth in subsection (d) below, except that requests relating to discovery, responses and objections thereto may be stripped after the expiration of the appeal period.

(b) When a file is to be stripped, all papers in the file shall be destroyed except:

(1) The complaint, including any amendment thereto, substituted complaint or amended complaint;

(2) All orders of notice, appearances and officers' returns;

(3) All military or other affidavits;

(4) Any cross complaint, third-party complaint, or amendment thereto;

(5) All responsive pleadings;

(6) Any memorandum of decision;

(7) The judgment file or notation of the entry of judgment, and all modifications of judgment;

(8) All executions issued and returned.

(c) Upon the expiration of the stripping date, or at any time if facilities are not available for local retention, the file in any action set forth in subsection (d) may be transferred to the records center or other proper designated storage area, where it shall be retained for the balance of the retention period. Files in actions concerning dissolution of marriage or civil union, legal separation, or annulment may, upon agreement with officials of the state library, be transferred to the state library at the expiration of their retention period.

(d) The following is a schedule which sets forth when a file may be stripped and the length of time the file shall be retained. The time periods indicated below shall run from the date judgment is rendered except receivership actions or actions for injunctive relief which shall run from the date of the termination of the receivership or injunction.

	Type of Case	*Stripping Date*	*Retention Date*
(1)	Administrative appeals		3 years
(2)	Contracts (where money damages are not awarded)	1 year	20 years
(3)	Eminent domain (except as provided in Section 7-12)		10 years
(4)	Family		
	-Dissolution of marriage or civil union, legal separation, annulment and change of name	5 years	75 years
	-Delinquency		Until subject is 25 years of age
	-Family With Service Needs		Until subject is 25 years of age
	-Termination of parental rights		Permanent
	-Neglect and uncared for		75 years
	-Emancipation of minor		5 years
	-Orders in relief from physical abuse (General Statutes § 46b-15)		5 years
	-Other		75 years
(5)	Family support magistrate matters		75 years
	-Uniform reciprocal enforcement of support (General Statutes §§ 46b-180 through 46b-211)		6 years after youngest child reaches majority age or after activity ceases, whichever is shorter, subject to federal law on filing an amended tax return.
	-Uniform Interstate Family Support Act (General Statutes §§ 46b-212 through 46b-213v)		6 years after youngest child reaches majority age or after activity ceases, whichever is shorter, subject to federal law on filing an amended tax return.

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(6)	Landlord/Tenant		
	-Summary process		3 years
	-Housing code enforcement (General Statutes § 47a-14h)		5 years
	-Contracts/Leases (where money damages are not awarded)	1 year	20 years
	-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
(7)	Miscellaneous		
	-Bar discipline		50 years
	-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
	-Mandamus, habeas corpus, arbitration, petition for new trial, action for an accounting, interpleader		10 years
	-Injunctive relief (where no other relief is requested)		5 years
(8)	Property (except as provided in Section 7-12)	5 years	26 years
(9)	Receivership		10 years
(10)	Small Claims		15 years
(11)	Torts (except as noted below)	1 year	26 years
	-Money damages if the judgment was rendered in an action to recover damages for personal injury caused by sexual assault where the party at fault was convicted under General Statutes §§ 53a-70 or 53a-70a (except where a satisfaction of judgment has been filed)		Permanent
(12)	Wills and estates		10 years
(13)	Asset forfeiture (General Statutes § 54-36h)		10 years
(14)	Alcohol and drug commitment (General Statutes § 17a-685)		10 years
(15)	All other civil actions (except as provided in Section 7-12)		75 years

(P.B. 1978-1997, Sec. 403C.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 26, 2006 to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the words "or civil union" were inserted in the second sentence of subsection (c), after the words "dissolution of marriage" and in item (4) of the schedule contained in subsection (d), after the words "dissolution of marriage."

COMMENTARY—2007: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.

Sec. 7-12. —Actions Affecting the Title to Land

Files in any actions concerning title to land which are terminated by a final judgment affecting any right, title or interest in real property shall be retained for forty years in the office of the clerk of the court location in which the judgment is rendered and thereafter may be transferred to the state library pursuant to Section 7-15 (b) or to the judicial branch record center.

(P.B. 1978-1997, Sec. 403D.)

Sec. 7-13. —Criminal/Motor Vehicle Files and Records

(Amended June 29, 1998, to take effect Jan. 1, 1999.)

(a) Upon the disposition of any criminal case, except a case in which a felony or a capital felony conviction resulted, or any motor vehicle case, including any matter brought pursuant to the commission of an infraction or a violation, the file may be stripped of all papers except (1) the executed arrest warrant and original affidavit in support of probable cause, the misdemeanor/motor vehicle summons, prosecutorial summons or the complaint ticket, (2) the uniform arrest report, (3) the information or indictment and any substitute information, (4) a written plea of nolo contendere, (5) documents relating to programs for adjudication and treatment as a youthful offender, programs relating to family violence education, community service labor, accelerated pretrial rehabilitation, pretrial drug education, pretrial alcohol education and treatment, determination of competency to stand trial or suspension of prosecution or any other programs for adjudication or treatment which may be created from time to time, (6) any official receipts, (7) the judgment mittimus, (8) any written notices of rights, (9) orders regarding probation, (10) any exhibits on file, (11) any transcripts on file of proceedings held in the matter, and (12) the transaction sheet.

(b) Unless otherwise ordered by the court, the copy of the application for a search warrant and affidavits filed pursuant to General Statutes § 54-33c shall be destroyed upon the expiration of three years from the filing of the copy of the application and affidavits with the clerk.

(c) Except as otherwise provided, the papers stripped from the court file may be destroyed upon the expiration of ninety days from the date of disposition of the case.

(d) Upon the disposition of any criminal or motor vehicle case in which the defendant has been released pursuant to a bond, the clerk shall remove the bond form from the file and maintain it in the clerk's office for such periods as determined by the chief court administrator.

(e) Upon the disposition of any criminal or motor vehicle case in which property is seized, whether pursuant to a search warrant, an arrest, an in rem proceeding or otherwise, the clerk shall remove the executed search warrant, if any, papers relating to any in rem proceedings, if any, and the

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inventory of the seized property from the court file and maintain them in the clerk's office during the pendency of proceedings to dispose of the property and for such further periods as determined by the chief court administrator.

(f) In cases in which there has been neither a conviction nor the payment of a fine on any charge, the file shall be destroyed upon the expiration of three years from the date of disposition.

(g) In cases in which a fine has been paid pursuant to an infraction or a violation, the file shall be destroyed upon the expiration of five years from the date of disposition.

(h) In cases in which there has been a conviction of a misdemeanor charge but not a conviction of a felony charge, the file shall be destroyed upon the expiration of ten years from the date of disposition.

(i) In cases in which there has been a conviction of a felony charge but not a conviction of a capital felony charge, the file, all exhibits and the transcripts of all proceedings held in the matter shall be destroyed upon the expiration of twenty years from the date of disposition or upon the expiration of the sentence, whichever is later.

(j) In cases in which there has been a conviction of a capital felony charge, the file, all exhibits and the transcripts of all proceedings held in the matter shall be destroyed upon the expiration of twenty-five years from the death of the person convicted.

(k) The file and records in any case in which an individual is adjudged a youthful offender shall be retained for ten years.

(*l*) The file in any case in which the disposition is not guilty by reason of mental disease or defect shall be retained for seventy-five years.

(P.B. 1978-1997, Sec. 403E.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 30, 2003, to take effect Jan. 1, 2004.)

Sec. 7-14. —Reports from Adult Probation and Family Division

(a) The office of adult probation shall maintain one copy of each presentence investigation report for twenty-five years. Copies of such reports in the custody of the clerk pursuant to Section 43-8 may be destroyed upon the expiration of one year from the date of final disposition of the case.

(b) Except as provided in General Statutes § 45a-757, the family division of the superior court shall maintain one copy of each case study report prepared pursuant to Section 25-60 for two years beyond the youngest child's eighteenth birthday and copies of such reports in the custody of the clerk may be destroyed upon the expiration of one year from the date of final disposition of the case.

(P.B. 1978-1997, Sec. 403F.)

Sec. 7-15. —Retention Ordered by Chief Court Administrator; Transfer to State Library

(a) The chief court administrator may require that any files and records of the judicial branch, the retention of which is not otherwise provided for by rule or statute, be retained either for a specific period or permanently, and may authorize the transfer of any such files and records to the records center or other proper facility for retention. Such files and records may be destroyed upon the expiration of the specific period required for their retention.

(b) Except where prohibited by rule or statute, any files and records of the judicial branch may, with the written consent of the chief court administrator and upon agreement with the appropriate officials of the state library, be transferred to the state library for retention.

(P.B. 1978-1997, Sec. 403G.)

Sec. 7-16. —Motion to Prevent Destruction of File

Upon the motion of any interested party, the judicial authority may, for good cause shown, exempt from destruction for a specified period the file in any case which has gone to judgment for reasons other than dismissal.

(P.B. 1978-1997, Sec. 403H.)

Sec. 7-17. Clerks' Offices

Clerks' offices shall be open each weekday from Monday to Friday inclusive, between 9 o'clock in the forenoon and 5 o'clock in the afternoon, but they shall not be open on legal holidays. The chief court administrator may increase the hours of the clerk's office for the purpose of the acceptance of bonds or for other limited purposes for one or more court locations. If the last day for filing any matter in the clerk's office falls on a day on which such office is not open as thus provided or is closed pursuant to authorization by the administrative judge in consultation with the chief court administrator or the chief court administrator due to the existence of special circumstances, then the last day for filing shall be the next business day upon which such office is open. A document that is electronically received by the clerk's office for filing after 5 o'clock in the afternoon on a day on which the clerk's office is open or that is electronically received by the clerk's office for filing at any time on a day on which the clerk's office is closed, shall be deemed filed on the next business day upon which such office is open. (See General Statutes § 51-59 and annotations.)

(P.B. 1978-1997, Sec. 405.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 21, 2004, to take effect July 13, 2004.)

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Sec. 7-18. Hospital, Psychiatric and Medical Records

Hospital, psychiatric and medical records shall not be filed with the clerk unless such records are submitted in a sealed envelope clearly identified with the case caption, the subject's name and the health care provider, institution or facility from which said records were issued. Such records shall be opened only pursuant to court order.

(P.B. 1978-1997, Secs. 397B, 1011E.)

Sec. 7-19. Issuing Subpoenas for Witnesses on Behalf of Pro Se Litigants

Pro se litigants seeking to compel the attendance of necessary witnesses in connection with the hearing of any civil matter, including matters scheduled on short calendar or special proceeding lists or for trial, shall file an application to have the clerk of the court issue subpoenas for that purpose. The clerk, after verifying the scheduling of the short calendar hearing, special proceeding or trial, shall present the application to the judge before whom the matter is scheduled for hearing, or the administrative judge or any judge designated by the administrative judge if the matter has not been scheduled before a specific judge, which judge shall conduct an ex parte review of the application and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate.

(P.B. 1978-1997, Sec. 395A.)

Sec. 7-20. Records of Short Calendar Matters

The clerk shall keep a record of all matters assigned for hearing on the civil short calendar together with the disposition made of them. Such records shall be retained for such period as determined by the chief court administrator.

(P.B. 1978-1997, Sec. 397A.)

Sec. 7-21. Removing Exhibits and Other Papers

Unless otherwise ordered by the judicial authority, it is the duty of attorneys and pro se parties, upon the final determination of any civil case, to remove from the courthouse all exhibits that have been entered into evidence, briefs, depositions, and memoranda and, if not so removed, such items may be destroyed by the clerk four months after the final determination of the case, without notice.

(P.B. 1978-1997, Sec. 401.)

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SUPERIOR COURT—PROCEDURE IN CIVIL MATTERS

CHAPTER 8

COMMENCEMENT OF ACTION

Sec.		Sec.	
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8-2.	Waiver of Court Fees and Costs	8-8.	Member of Community Defending to Give Bond
8-3.	Bond for Prosecution	8-9.	Bond by Nonresident in Realty Action
8-4.	Certification of Financial Responsibility	8-10.	Surety Company Bond Acceptable
8-5.	Remedy for Failure to Give Bond	8-11.	Action on Probate Bond; Endorsement of Writ
8-6.	Bond Ordered by Judicial Authority	8-12.	Renewal of Bond

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 8-1. Mesne Process

(a) Mesne process in civil actions shall be a writ of summons or attachment, describing the parties, the court to which it is returnable and the time and place of appearance, and shall be accompanied by the plaintiff's complaint. Such writ may run into any judicial district or geographical area and shall be signed by a commissioner of the superior court or a judge or clerk of the court to which it is returnable. Except in those actions and proceedings indicated below, the writ of summons shall be on a form substantially in compliance with the following judicial branch forms prescribed by the chief court administrator: Form JD-FM-3 in family actions, Form JD-HM-32 in summary process actions, and Form JD-CV-1 in other civil actions, as such forms shall from time to time be amended. Any person proceeding without the assistance of counsel shall sign the complaint and present the complaint and proposed writ of summons to the clerk; the clerk shall review the proposed writ of summons and, unless it is defective as to form, shall sign it.

(b) Form JD-FM-3, Form JD-HM-32, and Form JD-CV-1 shall not be used in the following actions and proceedings:

(1) Applications for change of name.

(2) Proceedings pertaining to arbitration.

(3) Probate appeals.

(4) Administrative appeals.

(5) Verified petitions for paternity.

(6) Verified petitions for support orders.

(7) Any actions or proceedings in which an attachment, garnishment or replevy is sought.

(8) Applications for custody.

(9) Applications for visitation.

(c) A plaintiff may, before service on a defendant, alter printed forms JD-FM-3, JD-HM-32, and JD-CV-1 in order to make them conform to any relevant amendments to the rules of practice or statutes.

(P.B. 1978-1997, Sec. 49.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 8-2. Waiver of Court Fees and Costs

(a) Prior to the commencement of an action, or at any time during its pendency, a party may file with the clerk of the court in which the action is pending, or in which the party intends to return a writ, summons and complaint, an application for waiver of fees payable to the court and for payment by the state of the costs of service of process. The application shall set forth the facts which are the basis of the claim for waiver and for payment by the state of any costs of service of process; a statement of the applicant's current income, expenses, assets and liabilities; pertinent records of employment, gross earnings, gross wages and all other income; and the specific fees and costs of service of process sought to be waived or paid by the state and the amount of each. The application and any representations shall be supported by an affidavit of the applicant to the truth of the facts recited.

(b) The clerk with whom such an application is filed shall refer it to the court of which he or she is clerk. After such a hearing as the judicial authority determines is necessary under the particular circumstances, the judicial authority shall render its judgment on the application, which judgment shall contain a statement of the facts it has found, with its conclusions thereon.

(P.B. 1978-1997, Sec. 50.)

Sec. 8-3. Bond for Prosecution

(a) Except as provided below, if the plaintiff in any civil action is not an inhabitant of this state, or if it does not appear to the authority signing the process that the plaintiff is able to pay the

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costs of the action should judgment be rendered against the plaintiff, he or she shall, before such process is signed, enter into a recognizance to the adverse party with some substantial inhabitant of this state as surety, or some substantial inhabitant of this state shall enter into a recognizance to the adverse party, that the plaintiff shall prosecute the action to effect, and answer all damages in case the plaintiff does not make his or her plea good; and no such recognizance shall be discharged by any amendment or alteration of the process between the time of signing and of serving it. (See General Statutes § 52-185 and annotations.)

(b) No recognizance shall be required of a pro se complainant in a summary process action.

(P.B. 1978-1997, Sec. 51.)

Sec. 8-4. Certification of Financial Responsibility

(a) Except as provided below, in all actions wherein costs may be taxed against the plaintiff, no mesne process shall be issued until the recognizance of a third party for costs has been taken, unless the authority signing the writ shall certify thereon that he or she has personal knowledge as to the financial responsibility of the plaintiff and deems it sufficient.

(b) No recognizance shall be required of a pro se complainant in a summary process action.

(c) No attorney shall enter into a recognizance upon a writ which such attorney signs.

(P.B. 1978-1997, Sec. 52.)

Sec. 8-5. Remedy for Failure to Give Bond

(a) When there has been a failure to comply with the provisions of Sections 8-3 and 8-4; the validity of the writ and service shall not be affected unless the neglect is made a ground of a motion to dismiss.

(b) If the judicial authority, upon the hearing of the motion to dismiss, directs the plaintiff to file a bond to prosecute in an amount deemed sufficient by the judicial authority, the action shall be dismissed unless the plaintiff complies with the order of the judicial authority within two weeks of such order.

(c) Upon the filing of such bond, the case shall proceed in the same manner and to the same effect as to rights of attachment and in all other respects as though the neglect had not occurred. The judicial authority may, in its discretion, order, as a condition to the acceptance of the bond, that the plaintiff pay to the defendant costs not to exceed the costs in full to the date of the order. (See General Statutes § 52-185 and annotations.)

(P.B. 1978-1997, Sec. 53.)

Sec. 8-6. Bond Ordered by Judicial Authority

If the judicial authority in which any action is pending finds that any bond taken therein for prosecution, or on appeal, is insufficient, or that the plaintiff has given no bond for prosecution and is not able to pay the costs, it shall order a sufficient bond to be given before trial, unless the trial will thereby necessarily be delayed. In determining the sufficiency of the bond to be given, the judicial authority shall consider only the taxable costs which the plaintiff may be responsible for under General Statutes § 52-257, except that in no event shall the judicial authority consider the fees or charges of expert witnesses notwithstanding that such fees or charges may be allowable under that section. Any party failing to comply with such order may be nonsuited or defaulted, as the case may be. Bonds for the prosecution of any civil action or appeal, pending in any court, may be taken in vacation by its clerk. (See General Statutes § 52-186 and annotations.)

(P.B. 1978-1997, Sec. 54.)

Sec. 8-7. Request to Furnish Bond

No order for a bond for prosecution will be made by the judicial authority unless it be shown that the adverse party has been requested in writing to furnish the same and has refused such request or has failed to file a satisfactory bond within a reasonable time after the request was made.

(P.B. 1978-1997, Sec. 55.)

Sec. 8-8. Member of Community Defending to Give Bond

If, in any action against a community, any individual member of such community appears to defend, he or she shall procure bond with surety to the acceptance of the court in which the action is pending, to save such community harmless from all costs which may arise by reason of such appearance, which bond shall be payable to such community and be filed in such court. Any such individual member who successfully defends against such action shall be entitled to the costs recoverable from the plaintiff unless the community likewise appeared and incurred the costs of such defense. (See General Statutes § 52-187 and annotations.)

(P.B. 1978-1997, Sec. 56.)

Sec. 8-9. Bond by Nonresident in Realty Action

Each nonresident defendant in any civil action relating to real estate or any interest therein, if any relief other than money damages is claimed, may be ordered by the judicial authority, during the pendency of such action, to give such bond

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to such other party or parties to such action as the judicial authority may direct, conditioned for the payment of costs. Judgment as on default may be rendered against any defendant who fails to comply with such order. (See General Statutes § 52-188.)

(P.B. 1978-1997, Sec. 57.)

Sec. 8-10. Surety Company Bond Acceptable

Any surety company chartered by this state or authorized to do business herein may be accepted as surety or recognizor upon any bond or recognizance required by law in any civil action or in any proceeding instituted under the statutes of this state and, in any case where a bond or recognizance is by law required, the bond of such company, duly executed and conditioned for the performance of the obligations expressed in such bond or recognizance, may be accepted by the person having authority thereto, and shall be filed by him or her in the court to which such action or proceeding is returnable or pending. (See General Statutes § 52-189 and annotations.)

(P.B. 1978-1997, Sec. 58.)

Sec. 8-11. Action on Probate Bond; Endorsement of Writ

The writ in any action brought upon a probate bond, or bond taken to a judge of probate and such judge's successors in office, shall be dismissed unless, before its issue, some responsible inhabitant of the state signs a written endorsement upon it, agreeing to be responsible for the costs of suit. If the endorser dies or removes from this state, a new endorser on such writ shall be substituted; and the court before which the suit is pending may at any time order the substitution of a new endorser to be approved by it. For any failure to comply with such an order the plaintiff may be nonsuited. (See General Statutes § 52-190 and annotations.)

(P.B. 1978-1997, Sec. 59.)

Sec. 8-12. Renewal of Bond

Bonds given in the course of any judicial proceedings may, for reasonable cause and upon due notice, be renewed, or other bonds taken in lieu of them, by the court, or by the judge before whom the matter is pending.

(P.B. 1978-1997, Sec. 60.)

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CHAPTER 9

PARTIES

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 9-1. Continuance for Absent or Nonresident Defendant

Every civil action in which the defendant is an inhabitant of this state but is absent therefrom at the commencement of the suit and continues to be absent until after the return day, without having entered any appearance therein, shall be continued or postponed for thirty days by order of the judicial authority. If the defendant does not then appear and no special reason is shown for further delay, judgment by default may be rendered against the defendant. If the defendant is not an inhabitant or resident of this state at the commencement of the action and does not appear therein, the judicial authority shall continue or postpone it for a period of three months and may, if it deems further notice advisable, direct such further notice of the pendency of the action to be given to the defendant by publication in some newspaper, or otherwise, as it deems expedient, or may authorize any person empowered to serve process by the laws of the foreign jurisdiction in which such defendant resides to serve upon such defendant a copy of the summons and complaint and of the order of notice and such person shall make affidavit of his or her doings thereon on the original order of notice. If, upon the expiration of such three months, the defendant does not then appear and no special reason is shown for further delay, judgment may be rendered against such defendant by default. Upon the expiration of any such continuance, it shall be presumed prima facie that no special reason for further delay exists. In actions of foreclosure, including prayers for relief incident thereto and part thereof, judgment may then be rendered upon the plaintiff's motion for judgment of foreclosure. The provisions of this section shall not apply in the case of any civil action brought under and pursuant to General Statutes § 47-33 or § 52-69 and no continuance or postponement of any such action or additional notice of the pendency thereof shall be required unless the judicial authority so orders. (See General Statutes § 52-87 and annotations.)

(P.B. 1978-1997, Sec. 80.)

Sec. 9-2. Defense by Garnishee; Continuance

In any action by foreign attachment, if the defendant does not appear, any garnishee may be admitted to defend his or her principal; but, if the defendant is not in this state and does not appear, personally or by attorney, and the garnishee does not appear to defend, the action shall be continued, postponed or adjourned for a period of three months from the return day of the writ. Any continuance, postponement or adjournment, prescribed in this or Section 9-1, shall not be granted or, if granted, shall terminate whenever the judicial authority finds that the absent or nonresident defendant, or authorized agent or attorney, has received actual notice of the pendency of the case at least twelve days prior to such finding, and thereupon, unless some special reason is shown for further delay, the cause may be brought to trial. (See General Statutes § 52-88 and annotations.)

(P.B. 1978-1997, Sec. 81.)

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Sec. 9-3. Joinder of Parties and Actions; Interested Persons as Plaintiffs

All persons having an interest in the subject of the action, and in obtaining the judgment demanded, may be joined as plaintiffs, except as otherwise expressly provided; and, if one who ought to be joined as plaintiff declines to join, such person may be made a defendant, the reason therefor being stated in the complaint. (See General Statutes § 52-101 and annotations.)

(P.B. 1978-1997, Sec. 83.)

Sec. 9-4. —Joinder of Plaintiffs in One Action

All persons may be joined in one action as plaintiffs in whom any right of relief in respect to or arising out of the same transaction or series of transactions is alleged to exist either jointly or severally when, if such persons brought separate actions, any common question of law or fact would arise; provided, if, upon the motion of any party, it would appear that such joinder might embarrass or delay the trial of the action, the judicial authority may order separate trials, or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for the relief to which he, she or they may be entitled; and there shall be but one entry fee, one jury fee, if claimed for jury trial, and such other costs as may by rule be prescribed.

(P.B. 1978-1997, Sec. 84.)

Sec. 9-5. —Consolidation of Actions

(a) Whenever there are two or more separate actions which should be tried together, the judicial authority may, upon the motion of any party or upon its own motion, order that the actions be consolidated for trial.

(b) If a party seeks consolidation, the motion to consolidate shall be filed in all of the court files proposed to be consolidated, shall include the docket number and judicial district of each of the cases, and shall contain a certification specifically stating that the motion was served in accordance with Sections 10-12 through 10-17 on all parties to such actions. The certification shall specifically recite the name and address of each counsel and pro se party served, the date of such service and the name and docket number of the case in which that person has appeared. The moving party shall give reasonable notice to all such parties of the date on which the motion will be heard on short calendar. The judicial authority shall not consider the motion unless it is satisfied that such notice was given.

(c) The court files in any actions consolidated pursuant to this section shall be maintained as separate files and all documents submitted by counsel or the parties shall bear only the docket number and case title of the file in which it is to be filed.

(P.B. 1978-1997, Sec. 84A.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 9-6. —Interested Persons as Defendants

Any person may be made a defendant who has or claims an interest in the controversy, or any part thereof, adverse to the plaintiff, or whom it is necessary, for a complete determination or settlement of any question involved therein, to make a party. (See General Statutes § 52-102 and annotations.)

(P.B. 1978-1997, Sec. 85.)

Sec. 9-7. Class Actions; Prerequisites to Class Actions

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(P.B. 1978-1997, Sec. 87.)

Sec. 9-8. —Class Actions Maintainable

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

(P.B. 1978-1997, Sec. 88.)

Sec. 9-9. —Dismissal or Compromise of Class Action

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

(P.B. 1978-1997, Sec. 89.)

Sec. 9-10. —Orders to Ensure Adequate Representation

The judicial authority at any stage of an action under this section may require such security and impose such terms as shall fairly and adequately protect the interests of the class in whose behalf the action is brought or defended. It may order that notice be given, in such manner as it may

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direct, of the pendency of the action, of a proposed settlement, of entry of judgment, or of any other proceedings in the action, including notice to the absent persons that they may come in and present claims and defenses if they so desire. Whenever the representation appears to the judicial authority inadequate fairly to protect the interests of absent parties who may be bound by the judgment, it may at any time prior to judgment order an amendment of the pleadings, eliminating therefrom all reference to representation of absent persons, and it shall order entry of judgment in such form as to affect only the parties to the action and those adequately represented.
(P.B. 1978-1997, Sec. 90.)

Sec. 9-11. Executor, Administrator or Trustee of Express Trust

An executor, administrator, or trustee of an express trust may sue or be sued without joining the persons represented by him or her and beneficially interested in the suit. The term "trustee of an express trust" shall be construed to include any person with whom, or in whose name, a contract is made for the benefit of another. (See General Statutes § 52-106 and annotations.)
(P.B. 1978-1997, Sec. 91.)

Sec. 9-12. Personal Representatives of Cocontractor

In suits on a joint contract, whether partnership or otherwise, the personal representatives of a deceased cocontractor may join, as plaintiffs, and be joined, as defendants, with the survivor; provided, where the estate of the decedent is in settlement in this state as an insolvent estate, his or her personal representatives cannot be joined as defendants. (See General Statutes § 52-78.)
(P.B. 1978-1997, Sec. 92.)

Sec. 9-13. Persons Liable on Same Instrument

Persons severally and immediately liable on the same obligation or instrument, including parties to bills of exchange and promissory notes, and endorsers, guarantors, and sureties, whether on the same or by separate instruments, may all, or any of them, be joined as defendants, and a joint judgment may be rendered against those so joined.
(P.B. 1978-1997, Sec. 93.)

Sec. 9-14. Defendants Alternately Liable

Persons may be joined as defendants against whom the right to relief is alleged to exist in the alternative, although a right to relief against one may be inconsistent with a right to relief against the other.
(P.B. 1978-1997, Sec. 94.)

Sec. 9-15. Assignee of Part Interest

If a part interest in a contract obligation be assigned, the assignor retaining the remaining interest and the assignee may join as plaintiffs.
(P.B. 1978-1997, Sec. 95.)

Sec. 9-16. Assignment Pending Suit

If, pending the action, the plaintiff assigns the cause of action, the assignee, upon written motion, may either be joined as a coplaintiff or be substituted as a sole plaintiff, as the judicial authority may order; provided that it shall in no manner prejudice the defense of the action as it stood before such change of parties.
(P.B. 1978-1997, Sec. 96.)

Sec. 9-17. Unsatisfied Judgment against One Defendant

Where the plaintiff may at his or her option join several persons as defendants, or sue them separately, judgment without satisfaction against one shall not bar a suit against another.
(P.B. 1978-1997, Sec. 97.)

Sec. 9-18. Addition or Substitution of Parties; Additional Parties Summoned in by Court

The judicial authority may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the judicial authority may direct that they be brought in. If a person not a party has an interest or title which the judgment will affect, the judicial authority, on its motion, shall direct that person to be made a party. (See General Statutes § 52-107 and annotations.)
(P.B. 1978-1997, Sec. 99.)

Sec. 9-19. —Nonjoinder and Misjoinder of Parties

Except as provided in Sections 10-44 and 11-3 no action shall be defeated by the nonjoinder or misjoinder of parties. New parties may be added and summoned in, and parties misjoined may be dropped, by order of the judicial authority, at any stage of the cause, as it deems the interests of justice require. (See General Statutes § 52-108 and annotations.)
(P.B. 1978-1997, Sec. 100.)

Sec. 9-20. —Substituted Plaintiff

When any action has been commenced in the name of the wrong person as plaintiff, the judicial authority may, if satisfied that it was so commenced through mistake and that it is necessary for the determination of the real matter in dispute so to do, allow any other person to be substituted

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or added as plaintiff. (See General Statutes § 52-109 and annotations.)
(P.B. 1978-1997, Sec. 101.)

Sec. 9-21. —Counterclaim; Third Parties

When a counterclaim raises questions affecting the interests of third parties, the defendant may, and if required by the judicial authority shall, cause such parties to be summoned in as parties to such suit. (See General Statutes § 52-110 and annotations.)
(P.B. 1978-1997, Sec. 102.)

Sec. 9-22. —Motion to Cite in New Parties

Any motion to cite in or admit new parties must comply with Section 11-1 and state briefly the grounds upon which it is made.
(P.B. 1978-1997, Sec. 103.)

Sec. 9-23. Suit by Real Party in Interest

An action may be brought in all cases in the name of the real party in interest, but any claim or defense may be set up which would have been available had the plaintiff sued in the name of the nominal party in interest.
(P.B. 1978-1997, Sec. 104.)

Sec. 9-24. Change of Name by Minor Child

In all proceedings for change of name under General Statutes § 52-11, brought by a minor child through his or her next friend, the parents of such child, not named as next friends, shall be necessary parties and shall be cited in, in such manner as shall be ordered by the court or a judge thereof.
(P.B. 1978-1997, Sec. 105.)

Sec. 9-25. Action on Bond to Municipal Officer

When any bond, note or other security is taken to any officer of a community or corporation in this state, wherein the beneficial interest belongs, or on the face of such security appears to belong, to such community or corporation, any action to recover or enforce the same may be maintained by such community or corporation in its own corporate name. (See General Statutes § 52-73a.)
(P.B. 1978-1997, Sec. 106.)

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CHAPTER 10

PLEADINGS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 10-1. Fact Pleading

Each pleading shall contain a plain and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved, such statement to be divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation. If any such pleading does not fully disclose the ground of claim or defense, the judicial authority may order a fuller and more particular statement; and, if in the opinion of the judicial

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authority the pleadings do not sufficiently define the issues in dispute, it may direct the parties to prepare other issues, and such issues shall, if the parties differ, be settled by the judicial authority.
(P.B. 1978-1997, Sec. 108.)

Sec. 10-2. Pleading Legal Effect

Acts and contracts may be stated according to their legal effect, but in so doing the pleading should be such as fairly to apprise the adverse party of the state of facts which it is intended to prove. Thus an act or promise by a principal, other than a corporation, if in fact proceeding from an agent known to the pleader, should be so stated; and the obligation of a spouse to pay for necessaries furnished to his or her spouse, whom he or she has driven from the marital house, should be stated according to the facts.
(P.B. 1978-1997, Sec. 109.)

Sec. 10-3. Allegations Based on Statutory Grounds; Foreign Law

(a) When any claim made in a complaint, cross complaint, special defense, or other pleading is grounded on a statute, the statute shall be specifically identified by its number.

(b) A party to an action who intends to raise an issue concerning the law of any jurisdiction or governmental unit thereof outside this state shall give notice in his or her pleadings or other reasonable written notice.
(P.B. 1978-1997, Sec. 109A.)

Sec. 10-4. Implied Duty

It is unnecessary to allege any promise or duty which the law implies from the facts pleaded.
(P.B. 1978-1997, Sec. 110.)

Sec. 10-5. Untrue Allegations or Denials

Any allegation or denial made without reasonable cause and found untrue shall subject the party pleading the same to the payment of such reasonable expenses, to be taxed by the judicial authority, as may have been necessarily incurred by the other party by reason of such untrue pleading; provided that no expenses for counsel fees shall be taxed exceeding $500 for any one offense. Such expenses shall be taxed against the offending party whether that party prevails in the action or not. (See General Statutes § 52-99 and annotations.)
(P.B. 1978-1997, Sec. 111.)

Sec. 10-6. Pleadings Allowed and Their Order

The order of pleading shall be as follows:

(1) The plaintiff's complaint.

(2) The defendant's motion to dismiss the complaint.

(3) The defendant's request to revise the complaint.

(4) The defendant's motion to strike the complaint.

(5) The defendant's answer (including any special defenses) to the complaint.

(6) The plaintiff's request to revise the defendant's answer.

(7) The plaintiff's motion to strike the defendant's answer.

(8) The plaintiff's reply to any special defenses.
(P.B. 1978-1997, Sec. 112.)

Sec. 10-7. Waiving Right to Plead

In all cases, when the judicial authority does not otherwise order, the filing of any pleading provided for by the preceding section will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section.
(P.B. 1978-1997, Sec. 113.)

Sec. 10-8. Time to Plead

Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall first advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of fifteen days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the initial time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that there is good cause to suspend such time requirements.
(P.B. 1978-1997, Sec. 114.)

Sec. 10-9. Common Counts

The common counts writ and complaint is hereby abolished.
(P.B. 1978-1997, Sec. 115.)

Sec. 10-10. Supplemental Pleadings; Counterclaims

Supplemental pleadings showing matters arising since the original pleading may be filed in actions for equitable relief by either party. In any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff and cross claims against any codefendant provided that each such counterclaim and cross claim

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arises out of the transaction or one of the transactions which is the subject of the plaintiff's complaint; and if necessary, additional parties may be summoned in to answer any such counterclaim or cross claim. A defendant may also file a counterclaim or cross claim under this section against any other party to the action for the purpose of establishing that party's liability to the defendant for all or part of the plaintiff's claim against that defendant.

(P.B. 1978-1997, Sec. 116.)

Sec. 10-11. Impleading of Third Party by Defendant in Civil Action

(a) A defendant in any civil action may move the court for permission as a third party plaintiff to serve a writ, summons and complaint upon a person not a party to the action who is or may be liable to such defendant for all or part of the plaintiff's claim against him or her. Such a motion may be filed at any time before trial and such permission may be granted by the judicial authority if, in its discretion, it deems that the granting of the motion will not unduly delay the trial of the action or work an injustice upon the plaintiff or the party sought to be impleaded. The writ, summons and complaint so served shall be equivalent in all respects to an original writ, summons and complaint, and the person upon whom it is served, hereinafter called the third party defendant, shall have available to him or her all remedies available to an original defendant, including the right to assert setoffs or counterclaims against the third party plaintiff, and shall be entitled to file cross complaints against any other third party defendant. The third party defendant may also assert against the plaintiff any defenses which the third party plaintiff has to the plaintiff's claim and may assert any claim against the plaintiff arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim against the third party plaintiff.

(b) The plaintiff, within twenty days after the third party defendant appears in the action, may assert any claim against the third party defendant arising out of the transaction or occurrence which is the subject matter of the original complaint, and the third party defendant, as against such claim, shall have available to him or her all remedies available to an original defendant, including the right to assert setoffs or counterclaims against the plaintiff.

(c) A third party defendant may proceed under this section against any person not a party to the action who is or may be liable to such defendant for all or any part of the third party plaintiff's claim against him or her.

(d) When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this section would entitle a defendant to do so.

(e) When any civil action in which such a third party has been brought in is reached for trial, the judicial authority hearing the case may order separate trials of different parts of the action and may make such other order respecting the trial of the action as will do justice to the parties and expedite final disposition of the case.

(P.B. 1978-1997, Sec. 117.)

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

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

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

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

(P.B. 1978-1997, Sec. 121.)

Sec. 10-13. —Method of Service

Service upon the attorney or upon a pro se party, except service pursuant to Section 10-12 (c), may be by delivering a copy or by mailing it to the last known address of the attorney or party. Delivery of a copy within this section means handing it to the attorney or to the party; or leaving it at the attorney's office with a person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the usual place of abode. Delivery of a copy within this rule, if the filing was made electronically in accordance with Section 4-4, may also mean electronic delivery to the last known electronic address of the attorney or party, provided that electronic delivery was consented to in writing by the person served. Service by mail is

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complete upon mailing. Service by electronic delivery is complete upon sending the electronic notice unless the party making service learns that the attempted service did not reach the electronic address of the person to be served. Service pursuant to Section 10-12 (c) shall be made in the same manner as an original writ and complaint is served or as ordered by the judicial authority.

(P.B. 1978-1997, Sec. 122.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 10-14. —Proof of Service

(a) Proof of service pursuant to Section 10-12 (a) and (b) may be made by written acknowledgment of service by the party served, by a certificate of counsel for the party filing the pleading or paper or by the pro se party, or by affidavit of the person making the service, but these methods of proof shall not be exclusive. Proof of service shall include the address at which such service was made. If proof of such service is made by a certificate of counsel or by the pro se party, it shall be in substantially the following form:

I hereby certify that a copy of the above was mailed or electronically delivered on *(Date)* to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served. *(Here list the name of each party served and the address at which service was made.)*

Or

to the party against whom the default for failure to appear is claimed. *(Here list the name of each nonappearing party served and the address at which service was made.)*

(Individual Signature of Counsel or Pro Se Party)

(b) Proof of service pursuant to Section 10-12 (c) shall be made in the same manner as proof of service is made of an original writ and complaint, unless the judicial authority ordered service in some other manner in which event service may be proved as prescribed in (a) above.

(P.B. 1978-1997, Sec. 123.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 10-15. —Numerous Defendants

In any action in which there is an unusually large number of defendants, the judicial authority, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross complaint, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other defendants and that the filing of any such pleading and service thereof upon the plaintiff shall be deemed to constitute due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the judicial authority directs.

(P.B. 1978-1997, Sec. 124.)

Sec. 10-16. —Several Parties Represented by One Attorney

When several parties have entered their appearance by one attorney or one firm of attorneys, such several parties shall be treated as a single party under this section.

(P.B. 1978-1997, Sec. 125.)

Sec. 10-17. —Service by Indifferent Person

Service of copies of any written pleading subsequent to the original complaint, motion, claim, notice or demand, when required by law or rule of the court, may be made by any indifferent person.

(P.B. 1978-1997, Sec. 126.)

Sec. 10-18. Penalty for Failing to Plead

Parties failing to plead according to the rules and orders of the judicial authority may be nonsuited or defaulted, as the case may be. (See General Statutes § 52-119 and annotations.)

(P.B. 1978-1997, Sec. 128.)

Sec. 10-19. Implied Admissions

Every material allegation in any pleading which is not denied by the adverse party shall be deemed to be admitted, unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief.

(P.B. 1978-1997, Sec. 129.)

Sec. 10-20. Contents of Complaint

The first pleading on the part of the plaintiff shall be known as the complaint. It shall contain a concise statement of the facts constituting the cause of action and, on a separate page of the complaint, a demand for relief which shall be a statement of the remedy or remedies sought. When money damages are sought in the demand for relief, the demand for relief shall include the information required by General Statutes § 52-91.

(P.B. 1978-1997, Sec. 131.)

Sec. 10-21. Joinder of Causes of Action

In any civil action the plaintiff may include in the complaint both legal and equitable rights and causes of action, and demand both legal and equitable remedies; but, if several causes of action are united in the same complaint, they shall all be brought to recover, either (1) upon contract,

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express or implied, or (2) for injuries, with or without force, to person and property, or either, including a conversion of property to the defendant's use, or (3) for injuries to character, or (4) upon claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same, or (5) upon claims to recover personal property specifically, with or without damages for the withholding thereof, or (6) claims arising by virtue of a contract or by operation of law in favor of or against a party in some representative or fiduciary capacity, or (7) upon claims, whether in contract or tort or both, arising out of the same transaction or transactions connected with the same subject of action. The several causes of action so united shall all belong to one of these classes, and, except in an action for the foreclosure of a mortgage or lien, shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; and, in any case in which several causes of action are joined in the same complaint, or as matter of counterclaim or setoff in the answer, if it appears to the judicial authority that they cannot all be conveniently heard together, it may order a separate trial of any such cause of action or may direct that any one or more of them be deleted from the complaint or answer. (See General Statutes § 52-97 and annotations.)

(P.B. 1978-1997, Sec. 133.)

Sec. 10-22. —Transactions Connected with Same Subject

Transactions connected with the same subject of action within the meaning of subdivision (7) of Section 10-21, may include any transactions which grew out of the subject matter in regard to which the controversy has arisen; as, for instance, the failure of a bailee to use the goods bailed for the purpose agreed, also an injury to them by his or her fault or neglect; the breach of a covenant for quiet enjoyment by the entry of the lessor, also a trespass to goods, committed in the course of the entry. Injuries to character, within the meaning of subdivision (3) of Section 10-21, may embrace libel, slander, and malicious prosecution.

(P.B. 1978-1997, Sec. 134.)

Sec. 10-23. —Joinder of Torts

Where several torts are committed simultaneously against the plaintiff, as a battery accompanied by slanderous words, they may be joined, within the meaning of subdivision (7) of Section 10-21, as causes of action arising out of the same transaction, although they may belong to different classes of torts.

(P.B. 1978-1997, Sec. 135.)

Sec. 10-24. —Legal and Equitable Relief

A cause of action for legal relief for breach of contract may be joined with another cause of action for equitable relief growing out of another contract, although such contracts in no way relate to each other.

(P.B. 1978-1997, Sec. 136.)

Sec. 10-25. Alternative Relief

The plaintiff may claim alternative relief, based upon an alternative construction of the cause of action.

(P.B. 1978-1997, Sec. 137.)

Sec. 10-26. Separate Counts

Where separate and distinct causes of action, as distinguished from separate and distinct claims for relief founded on the same cause of action or transaction, are joined, the statement of the second shall be prefaced by the words *Second Count,* and so on for the others; and the several paragraphs of each count shall be numbered separately beginning in each count with the number one.

(P.B. 1978-1997, Sec. 138.)

Sec. 10-27. Claim for Equitable Relief

A party seeking equitable relief shall specifically demand it as such, unless the nature of the demand itself indicates that the relief sought is equitable relief.

(P.B. 1978-1997, Sec. 139.)

Sec. 10-28. Interest and Costs Need Not Be Claimed

Interest and costs need not be specially claimed in the demand for relief, in order to recover them.

(P.B. 1978-1997, Sec. 140.)

Sec. 10-29. Exhibits as Part of Pleading

(a) Any plaintiff desiring to make a copy of any document a part of the complaint may, without reciting it or annexing it, refer to it as Exhibit A, B, C, etc., as fully as if it had been set out at length; but in such case the plaintiff shall serve a copy of such exhibit or exhibits on each other party to the action forthwith upon receipt of notice of the appearance of such party and file the original or a copy of such exhibit or exhibits in court with proof of service on each appearing party. Where such copy or copies exceed in all two pages in length, if the plaintiff annexes them to, or incorporates them in, the complaint at full length, the plaintiff shall not be allowed in costs for such part of the fees of the officer for copies of such complaint left in service, as are chargeable for copying such instrument or instruments, except to the extent of two pages.

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(b) When either the plaintiff or the defendant in any pleading subsequent to the complaint desires to make a copy of any document a part of his or her pleading, such party may, without reciting it therein, either annex it thereto, or refer to it therein, and shall serve it and file it in court with proof of service in the manner provided in Sections 10-12 through 10-17.

(P.B. 1978-1997, Sec. 141.)

Sec. 10-30. Motion to Dismiss; Request for Extension of Time to Respond

(Amended June 30, 2003, to take effect Jan. 1, 2004.)

Any defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance. Except in summary process matters, the motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant the request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request.

(P.B. 1978-1997, Sec. 142.) (Amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 10-31. —Grounds of Motion to Dismiss

(a) The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law, and where appropriate, with supporting affidavits as to facts not apparent on the record.

(b) Any adverse party who objects to this motion shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record.

(P.B. 1978-1997, Sec. 143.)

Sec. 10-32. —Waiver Based on Certain Grounds

Any claim of lack of jurisdiction over the person or improper venue or insufficiency of process or insufficiency of service of process is waived if not raised by a motion to dismiss filed in the sequence provided in Sections 10-6 and 10-7 and within the time provided by Section 10-30.

(P.B. 1978-1997, Sec. 144.)

Sec. 10-33. —Waiver and Subject Matter Jurisdiction

Any claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the judicial authority shall dismiss the action.

(P.B. 1978-1997, Sec. 145.)

Sec. 10-34. —Further Pleading by Defendant

If any motion to dismiss is denied with respect to any jurisdictional issue, the defendant may plead further without waiving the right to contest jurisdiction further.

(P.B. 1978-1997, Sec. 146.)

Sec. 10-35. Request to Revise

Whenever any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading, or (2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading, or (3) separation of causes of action which may be united in one complaint when they are improperly combined in one count, or the separation of two or more grounds of defense improperly combined in one defense, or (4) any other appropriate correction in an adverse party's pleading, the party desiring any such amendment in an adverse party's pleading may file a timely request to revise that pleading.

(P.B. 1978-1997, Sec. 147.)

Sec. 10-36. —Reasons in Request to Revise

The request to revise shall set forth, for each requested revision, the portion of the pleading sought to be revised, the requested revision, and the reasons therefor, followed by sufficient space in which the party to whom the request is directed can insert an objection and reasons therefor.

(P.B. 1978-1997, Sec. 148.)

Sec. 10-37. —Granting of and Objection to Request to Revise

(a) Any such request, after service upon each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, shall be filed with the clerk of the court in which the action is pending, and such request shall be deemed to have been automatically granted by the judicial authority on the date of filing and shall be complied with by the party to whom it is directed within thirty days of the date of filing the same, unless within thirty days of such filing the party to whom it is directed shall file objection thereto.

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(b) The objection and the reasons therefor shall be inserted on the request to revise in the space provided under the appropriate requested revision. In the event that a reason for objection requires more space than that provided on the request to revise, it shall be continued on a separate sheet of paper which shall be attached to that document. The request to revise on which objections have been inserted shall be appended to a cover sheet which shall comply with Sections 4-1 and 4-2 and the objecting party shall specify thereon to which of the requested revisions objection is raised. The cover sheet with the appended objections shall be filed with the clerk within thirty days from the date of the filing of the request for the next short calendar list. If the judicial authority overrules the objection, a substitute pleading in compliance with the order of the judicial authority shall be filed within fifteen days of such order.

(P.B. 1978-1997, Sec. 149.)

Sec. 10-38. —Waiver of Pleading Revisions

Whenever any party files any request to revise or any subsequent motion or pleading in the sequence provided in Sections 10-6 and 10-7, that party thereby waives any right to seek any further pleading revisions which that party might then have requested.

(P.B. 1978-1997, Sec. 150.)

Sec. 10-39. Motion to Strike

(a) Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint, or (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56 (b), the failure to join or give notice to any interested person, or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts, or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof.

(b) A motion to strike on the ground of the nonjoinder of a necessary party or noncompliance with Section 17-56 (b) must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action.

(P.B. 1978-1997, Sec. 152.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 10-40. —Date for Hearing Motion to Strike; Request for Extension of Time to Respond

(Amended June 30, 2003, to take effect Jan. 1, 2004.)

Except in summary process matters, the motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant the request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request.

(P.B. 1978-1997, Sec. 153.) (Amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 10-41. —Reasons in Motion to Strike

Each motion to strike raising any of the claims of legal insufficiency enumerated in the preceding sections shall separately set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each such claimed insufficiency.

(P.B. 1978-1997, Sec. 154.)

Sec. 10-42. —Memorandum of Law—Motion and Objection

(a) Each motion to strike must be accompanied by an appropriate memorandum of law citing the legal authorities upon which the motion relies.

(b) Any adverse party who objects to this motion shall, at least five days before the date the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law.

(P.B. 1978-1997, Sec. 155.)

Sec. 10-43. —When Memorandum of Decision Required on Motion to Strike

Whenever a motion to strike is filed and more than one ground of decision is set up therein, the judicial authority, in rendering the decision thereon, shall specify in writing the grounds upon which that decision is based.

(P.B. 1978-1997, Sec. 156.)

Sec. 10-44. —Substitute Pleading; Judgment

Within fifteen days after the granting of any motion to strike, the party whose pleading has

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been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint, or any count in a complaint, counterclaim or cross complaint has been stricken, and the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint, counterclaim or cross complaint, or count thereof. Nothing in this section shall dispense with the requirements of Sections 61-3 or 61-4 of the appellate rules.

(P.B. 1978-1997, Sec. 157.) (Amended June 30, 2003, to take effect Jan. 1, 2004.)

Sec. 10-45. —Stricken Pleading Part of Another Cause or Defense

Whenever the judicial authority grants a motion to strike the whole or any portion of any pleading or count which purports to state an entire cause of action or defense, and such pleading or portion thereof states or constitutes a part of another cause of action or defense, the granting of that motion shall remove from the case only the cause of action or defense which was the subject of the granting of that motion, and it shall not remove such pleading or count or any portion thereof so far as the same is applicable to any other cause of action or defense.

(P.B. 1978-1997, Sec. 158.)

Sec. 10-46. The Answer; General and Special Denial

The defendant in the answer shall specially deny such allegations of the complaint as the defendant intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally. Any defendant who intends to controvert the right of the plaintiff to sue as executor, or as trustee, or in any other representative capacity, or as a corporation, or to controvert the execution or delivery of any written instrument or recognizance sued upon, shall deny the same in the answer specifically.

(P.B. 1978-1997, Sec. 160.)

Sec. 10-47. —Evasive Denials

Denials must fairly meet the substance of the allegations denied. Thus, when the payment of a certain sum is alleged, and in fact a lesser sum was paid, the defendant cannot simply deny the payment generally, but must set forth how much was paid to the defendant; and where any matter of fact is alleged with divers circumstances, some of which are untruly stated, it shall not be sufficient to deny it as alleged, but so much as is true and material should be stated or admitted, and the rest only denied.

(P.B. 1978-1997, Sec. 161.)

Sec. 10-48. —Express Admissions and Denials to Be Direct and Specific

Express admissions and denials must be direct, precise and specific, and not argumentative, hypothetical or in the alternative. Accordingly, any pleader wishing expressly to admit or deny a portion only of a paragraph must recite that portion; except that where a recited portion of a paragraph has been either admitted or denied, the remainder of the paragraph may be denied or admitted without recital. Admissions or denials of allegations identified only by a summary or generalization thereof, or by describing the facts alleged as ''consistent'' or ''inconsistent'' with other facts recited or referred to, are improper.

(P.B. 1978-1997, Sec. 162.)

Sec. 10-49. —Suit by Corporation; Admission by General Denial

In an action by a corporation, foreign or domestic, founded upon any contract, express or implied, the defendant shall not, under a general denial, be permitted to dispute, but shall be deemed to admit, the capacity of the plaintiff to make such contract.

(P.B. 1978-1997, Sec. 163.)

Sec. 10-50. —Denials; Special Defenses

No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, coverture, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded, while advantage may be taken, under a simple denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be the plaintiff's own.

(P.B. 1978-1997, Sec. 164.)

Sec. 10-51. —Several Special Defenses

Where several matters of defense are pleaded, each must refer to the cause of action which it is intended to answer, and be separately stated and designated as a separate defense, as, *First*

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Defense, Second Defense, etc. Where the complaint or counterclaim is for more than one cause of action, set forth in several counts, each separate matter of defense should be preceded by a designation of the cause of action which it is designed to meet, in this manner: *First Defense to First Count, Second Defense to First Count, First Defense to Second Count,* and so on. Any statement of a matter of defense resting in part upon facts pleaded in any preceding statement in the same answer may refer to those facts as thus recited, without otherwise repeating them.

(P.B. 1978-1997, Sec. 165.)

Sec. 10-52. —Admissions and Denials in Special Defense

No special defense shall contain a denial of any allegation of the complaint or counterclaim unless that denial is material to such defense. An admission of any allegation of the complaint or counterclaim in a special defense will be deemed to incorporate such allegation in the defense.

(P.B. 1978-1997, Sec. 166.)

Sec. 10-53. —Pleading Contributory Negligence

If contributory negligence is relied upon as a defense, it shall be affirmatively pleaded by the defendant and the defendant shall specify the negligent acts or omissions on which the defendant relies. (See General Statutes § 52-114 and annotations.)

(P.B. 1978-1997, Sec. 167.)

Sec. 10-54. —Pleading of Counterclaim and Setoff

In any case in which the defendant has either in law or in equity or in both a counterclaim, or right of setoff, against the plaintiff's demand, the defendant may have the benefit of any such setoff or counterclaim by pleading the same as such in the answer, and demanding judgment accordingly; and the same shall be pleaded and replied to according to the rules governing complaints and answers. (See General Statutes §§ 52-139 to 52-142.)

(P.B. 1978-1997, Sec. 168.)

Sec. 10-55. —Withdrawal of Action after Counterclaim

The withdrawal of an action after a counterclaim, whether for legal or equitable relief, has been filed therein shall not impair the right of the defendant to prosecute such counterclaim as fully as if said action had not been withdrawn, provided that the defendant shall, if required by the judicial authority, give bond to pay costs as in civil actions.

(P.B. 1978-1997, Sec. 169.)

Sec. 10-56. Subsequent Pleadings; Plaintiff's Response to Answer

The plaintiff's reply pleading to each of the defendant's special defenses may admit some and deny others of the allegations of that defense, or by a general denial of that defense put the defendant upon proof of all the material facts alleged therein.

(P.B. 1978-1997, Sec. 171.)

Sec. 10-57. —Matter in Avoidance of Answer

Matter in avoidance of affirmative allegations in an answer or counterclaim shall be specially pleaded in the reply. Such a reply may contain two or more distinct avoidances of the same defense or counterclaim, but they must be separately stated.

(P.B. 1978-1997, Sec. 172.)

Sec. 10-58. —Pleadings Subsequent to Reply

Further pleadings, subsequent in their nature, may be had if necessary by leave of the judicial authority.

(P.B. 1978-1997, Sec. 173.)

Sec. 10-59. Amendments; Amendment as of Right by Plaintiff

The plaintiff may amend any defect, mistake or informality in the writ, complaint or petition and insert new counts in the complaint, which might have been originally inserted therein, without costs, during the first thirty days after the return day. (See General Statutes § 52-128 and annotations.)

(P.B. 1978-1997, Sec. 175.)

Sec. 10-60. —Amendment by Consent, Order of Judicial Authority, or Failure to Object

(a) Except as provided in Section 10-66, a party may amend his or her pleadings or other parts of the record or proceedings at any time subsequent to that stated in the preceding section in the following manner:

(1) By order of judicial authority; or

(2) By written consent of the adverse party; or

(3) By filing a request for leave to file such amendment, with the amendment appended, after service upon each party as provided by Sections 10-12 through 10-17, and with proof of service endorsed thereon. If no objection thereto has been filed by any party within fifteen days from the date of the filing of said request, the amendment shall be deemed to have been filed by consent of the adverse party. If an opposing party shall have objection to any part of such request

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or the amendment appended thereto, such objection in writing specifying the particular paragraph or paragraphs to which there is objection and the reasons therefor, shall, after service upon each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, be filed with the clerk within the time specified above and placed upon the next short calendar list.

(b) The judicial authority may restrain such amendments so far as may be necessary to compel the parties to join issue in a reasonable time for trial. If the amendment occasions delay in the trial or inconvenience to the other party, the judicial authority may award costs in its discretion in favor of the other party. For the purposes of this rule, a substituted pleading shall be considered an amendment. (See General Statutes § 52-130 and annotations.)

(P.B. 1978-1997, Sec. 176.)

Sec. 10-61. —Pleading after Amendment

When any pleading is amended the adverse party may plead thereto within the time provided by Section 10-8 or, if the adverse party has already pleaded, alter the pleading, if desired, within ten days after such amendment or such other time as the rules of practice, or the judicial authority, may prescribe, and thereafter pleadings shall advance in the time provided by that section. If the adverse party fails to plead further, pleadings already filed by the adverse party shall be regarded as applicable so far as possible to the amended pleading.

(P.B. 1978-1997, Sec. 177.)

Sec. 10-62. —Variance; Amendment

In all cases of any material variance between allegation and proof, an amendment may be permitted at any stage of the trial. If such allegation was made without reasonable excuse, or if the adverse party was actually misled thereby to his or her prejudice in maintaining the action or defense upon the merits, or if such amendment requires postponement of the trial or additional expense to the adverse party and this is shown to the satisfaction of the judicial authority, such amendment shall be made only upon payment of costs or upon such terms as the judicial authority may deem proper; but in any other case, without costs. Immaterial variances shall be wholly disregarded.

(P.B. 1978-1997, Sec. 178.)

Sec. 10-63. —Amendment; Legal or Equitable Relief

If, on the trial, whether upon an issue of fact or of law, of a cause wherein equitable relief is demanded, it appears that the plaintiff is not entitled to such relief but may be entitled to legal relief, the judicial authority may permit the complaint to be amended so as to present a proper case for the latter relief; and in like manner a complaint demanding legal relief may be so amended as to entitle the plaintiff to equitable relief. (See General Statutes § 52-137 and annotations.)

(P.B. 1978-1997, Sec. 179.)

Sec. 10-64. —Amendment Calling for Legal Relief; Jury Trial

If on the trial any complaint is so amended as to call for legal instead of equitable relief, the judicial authority shall not proceed to judgment until the defendant has had a reasonable opportunity to put the issue or issues, on which the new claim for relief may be based, on the jury docket. (See General Statutes § 52-138 and annotations.)

(P.B. 1978-1997, Sec. 180.)

Sec. 10-65. —Amending Contract to Tort and Vice Versa

A complaint for breach of contract may be amended so as to set forth a cause of action founded on a tort arising from the same transaction or subject of action; and a complaint founded on a tort may be amended so as to set forth a cause of action for a breach of contract arising out of the same transaction or subject of action. (See General Statutes § 52-136 and annotations.)

(P.B. 1978-1997, Sec. 181.)

Sec. 10-66. —Amendment of Amount in Demand

A party may amend the party's statement concerning the amount in demand by order of the judicial authority upon filing of a motion for leave to file such amendment, with a copy of the amendment appended, after service upon each party as provided by Sections 10-12 through 10-17, and with proof of service endorsed thereon. After obtaining permission of the judicial authority, the moving party shall file the original amendment with the clerk. If the amount, legal interest or property in demand was alleged to be less than $2500 in accordance with the provisions of Section 10-20, or, prior to October 1, 1979, was alleged to be less than $7500, and the party has been given permission by a judicial authority to amend the demand to an amount in excess of either amount, the party shall pay any entry fee prescribed by statute to the clerk when the amendment is filed.

(P.B. 1978-1997, Sec. 182.)

Sec. 10-67. —Amendment of Claim against Insolvent Estate

In any hearing on appeal from the doings of commissioners on the estate of an insolvent

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debtor or a deceased person, the claimant may amend any defect, mistake or informality in the statement of the claim, not changing the ground of action; such amendment to be upon such terms as to costs as the judicial authority directs. (See General Statutes § 52-131 and annotations.)
(P.B. 1978-1997, Sec. 183.)

Sec. 10-68. Pleading Special Matters; Pleading Notice

Whenever in an action of tort or upon a statute the plaintiff is compelled to allege the giving of a notice required by statute, the plaintiff shall either recite the same in the complaint or annex a copy thereto.
(P.B. 1978-1997, Sec. 185.)

Sec. 10-69. —Foreclosure Complaint; Pleading Encumbrances

The complaint in all actions seeking the foreclosure of a mortgage or other lien upon real estate shall set forth, in addition to the other essentials of such complaint: All encumbrances of record upon the property both prior and subsequent to the encumbrance sought to be foreclosed, the dates of such encumbrances, the amount of each and the date when such encumbrance was recorded; if such encumbrance be a mechanic's lien, the date of commencing to perform services or furnish materials as therein recited; and if such encumbrance be a judgment lien, whether said judgment lien contains a reference to the previous attachment of the same premises in the same action, as provided by General Statutes § 52-380a.
(P.B. 1978-1997, Sec. 186.)

Sec. 10-70. —Foreclosure of Municipal Liens

(a) In any action to foreclose a municipal tax or assessment lien the plaintiff need only allege and prove: (1) the ownership of the liened premises on the date when the same went into the tax list, or when said assessment was made; (2) that thereafter a tax in the amount specified in the list, or such assessment in the amount made, was duly and properly assessed upon the property and became due and payable; (3) (to be used only in cases where the lien has been continued by certificate) that thereafter a certificate of lien for the amount thereof was duly and properly filed and recorded in the land records of the said town on the date stated; (4) that no part of the same has been paid; and (5) other encumbrances as required by the preceding section.

(b) When the lien has been continued by certificate, the production in court of the certificate of lien, or a certified copy thereof, shall be prima facie evidence that all requirements of law for the assessment and collection of the tax or assessment secured by it, and for the making and filing of the certificate, have been duly and properly complied with. Any claimed informality, irregularity or invalidity in the assessment or attempted collection of the tax, or in the lien filed, shall be a matter of affirmative defense to be alleged and proved by the defendant.
(P.B. 1978-1997, Sec. 187.)

Sec. 10-71. —Action on Probate Bond

In any action upon a bond taken in a court of probate, not brought by a representative of the estate in connection with which the bond was given or by some person in that person's own behalf and that of all other persons interested in the estate, the plaintiff shall aver in the complaint or reply for whose special benefit the action is prosecuted, and how such persons are interested in the same, and how the act or neglect of the defendant has injured their rights or affected their interests and the judgment rendered in any such case shall not, in any future proceedings, by scire facias or otherwise, bar or conclude the rights of other persons interested in the bond. (See General Statutes § 52-117 and annotations.)
(P.B. 1978-1997, Sec. 189.)

Sec. 10-72. —Action by Assignee of Chose in Action

Where the assignee and equitable and bona fide owner of any chose in action, not negotiable, sues thereon in his or her own name, such party shall in the complaint allege that he or she is the actual bona fide owner thereof, and set forth when and how such party acquired title thereto. (See General Statutes § 52-118 and annotations.)
(P.B. 1978-1997, Sec. 190.)

Sec. 10-73. —Pleading Charters

All acts of incorporation passed by the General Assembly may be declared on or pleaded as public acts. (See General Statutes § 52-115 and annotations.)
(P.B. 1978-1997, Sec. 191.)

Sec. 10-74. —Wrongful Sale; Wrongful Conversion

Where the defendant has wrongfully sold personal property of the plaintiff, the latter may waive the tort, affirm the sale, and sue for the proceeds; but in case of wrongful conversion of property, without a sale, the plaintiff cannot waive the tort and declare as on a contract.
(P.B. 1978-1997, Sec. 192.)

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Sec. 10-75. —Goods Sold; Variance

In an action for goods sold at a reasonable price, if the proof is that they were sold at an agreed price, the plaintiff shall not be precluded, on the ground of a variance, from recovering such agreed price; and in an action for goods sold at an agreed price the plaintiff may recover a different or a reasonable price, if the proof fails to establish the price alleged; and the like rule shall prevail in actions for work done, materials furnished, or use and occupation of land.

(P.B. 1978-1997, Sec. 193.)

Sec. 10-76. —Probate Appeals; Reasons of Appeal

(a) Unless otherwise ordered, in all appeals from probate the appellant shall file reasons of appeal, which upon motion shall be made reasonably specific, within ten days after the return day; and pleadings shall thereafter follow in analogy to civil actions.

(b) Appellees opposing the probate of a will shall specifically deny such of the reasons of appeal as they intend to controvert and affirmatively allege any other grounds upon which they propose to rely.

(c) The appellant in appeals involving the probate of a will shall file, with the reasons of appeal, a copy of the will. (See General Statutes §§ 45a-186 to 45a-193.)

(P.B. 1978-1997, Sec. 194.)

Sec. 10-77. —Appeals from Commissioners

In all appeals from the allowance or disallowance of any claim by commissioners appointed by courts of probate, the party presenting the claim shall, within ten days after the return day, unless otherwise ordered, file a statement of the amount and nature of the claim, and of the facts upon which it is based, which statement shall conform, as far as may be, in form and substance, to the requirements of a complaint brought to recover upon said claim in a civil action. To such statement the adverse party, unless otherwise ordered by the judicial authority, shall plead, and thereafter the pleadings shall continue until issues are joined, as in civil actions.

(P.B. 1978-1997, Sec. 195.)

Sec. 10-78. —Pleading Collateral Source Payments

No pleading shall contain any allegations regarding receipt by a party of collateral source payments as described in General Statutes §§ 52-225a and 52-225b.

(P.B. 1978-1997, Sec. 195A.)

Sec. 10-79. —Pleading Issues of Policy Limitations

An insurer should raise issues of monetary policy limits, or credits for payments by or on behalf of third party tortfeasors, by special defense. When a jury determination of the facts raised by special defense is not necessary, the special defense shall not be submitted to the jury but, rather, shall be resolved by the trial court prior to the rendering of judgment.

(P.B. 1978-1997, Sec. 195B.)

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CHAPTER 11

MOTIONS, REQUESTS, ORDERS OF NOTICE, AND SHORT CALENDAR

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 11-1. Form of Motion and Request

Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing and shall, except in the case of a request, have annexed to it a proper order, and a proper order of notice and citation, if one or both are necessary. Such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon.

(P.B. 1978-1997, Sec. 196.)

Sec. 11-2. Definition of "Motion" and "Request"

As used in these rules, the term "motion" means any application to the court for an order, which application is to be acted upon by the court or any judge thereof; and the term "request" means any application to the court which shall be granted by the clerk by operation of these rules unless timely objection is filed.

(P.B. 1978-1997, Sec. 197.)

Sec. 11-3. Motion for Misjoinder of Parties

The exclusive remedy for misjoinder of parties is by motion to strike. As set forth in Section 10-39, the exclusive remedy for nonjoinder of parties is by motion to strike.

(P.B. 1978-1997, Sec. 198.)

Sec. 11-4. Applications for Orders of Notice

Applications for orders of notice, whether made to a court, a judge, a clerk, or an assistant clerk, shall be made in writing, shall state the residence of the party whom the notice is sought to reach or that all reasonable efforts have been made to ascertain the residence and have failed, and shall further state what notice is considered most likely to come to the attention of such person, with the reasons therefor, unless they are evident; and such applications shall become a part of the file of the case.

(P.B. 1978-1997, Sec. 199.)

Sec. 11-5. Subsequent Orders of Notice; Continuance

Motions made to the court for a second or subsequent order of notice shall be filed with the clerk, who shall call them to the attention of the judicial authority at the earliest convenient time. The judicial authority may thereupon enter its order or direct that the matter be placed on the next short calendar list. If a continuance of the case is desired, it may also be requested in the motion for the order of notice.

(P.B. 1978-1997, Sec. 200.)

Sec. 11-6. Notice by Publication

(a) If an order of notice is by publication and it states the nature of the action and the relief sought sufficiently to inform the party to whom the notice is addressed of the way in which the interests of the party may be affected, the authority issuing the order may direct that only the order be published.

(b) Every notice by publication shall have the words "State of Connecticut" in the caption of the

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case, and following it, in bold type, the words "Notice to (*the person to whom it is addressed*)."
(P.B. 1978-1997, Sec. 201.)

Sec. 11-7. Attestation; Publication; Proof of Compliance

Orders of notice of legal or judicial proceedings need not be directed to or attested by any officer or person, but all copies of complaints or other papers thereby ordered, served or mailed shall be so attested as true copies of the original. To prove publication of any legal notice, either the return of any officer authorized to serve process or the affidavit of any person showing that such publication was made as directed shall be sufficient. Such order shall not require publication of any recital stating where the designated newspaper is printed or recital of any other details in or pertinent to the application for such order which are not essential parts of the notice to be given. A copy of the prescribed notice, instead of the original order, may be left with the newspaper for publication purposes, and each original order shall be left with or returned to the clerk of the court in which the proceeding is pending or returnable. When proof of compliance with the order is filed with such clerk, he or she shall note such fact upon the docket, and such proof and order shall be preserved as part of the case file. (See General Statutes § 52-52 and annotations.)
(P.B. 1978-1997, Sec. 202.)

Sec. 11-8. Orders of Notice Directed outside of the United States of America

If service of process cannot be made under the applicable international treaty or convention within sixty days from the issuance of the summons, then the judicial authority may issue, upon the application of any party, an order of notice. In determining what manner and form of notice shall be ordered, the judicial authority shall consider the following:

(1) other methods of service specified or allowed in any applicable international treaty or convention, including any reservations;

(2) whether all applicable international treaties and conventions prohibit substituted service;

(3) what method of service provides the greatest likelihood the party being served will receive actual and timely notice of the suit so the party may appear and defend;

(4) whether a particular method of service violates the law, particularly the criminal law, of the foreign country involved;

(5) whether an actual agent of the party being served can be served within the United States.
(P.B. 1978-1997, Sec. 202A.)

Sec. 11-9. Disclosure of Previous Applications

Upon making a motion or application to the court, or to a judge thereof before the return day of the action, (1) for an order appointing a receiver or an injunction, or (2) for a modification or dissolution of any such order or injunction, or (3) for issuance of a prejudgment remedy, or (4) for a reduction or dissolution of an attachment, if a motion or application for the same order or injunction has been previously made to the court or to any judge, such motion or application shall so recite. Nothing in this section shall be so construed as to preclude the making of more than one motion or application for the same or similar order or injunction or affect in any way the right of the applicant to have such motion or application passed upon on its merits.
(P.B. 1978-1997, Sec. 203.)

Sec. 11-10. Requirement that Memorandum of Law Be Filed with Certain Motions

A memorandum of law briefly outlining the claims of law and authority pertinent thereto shall be filed and served by the movant with the following motions and requests: (1) motions regarding parties filed pursuant to Sections 9-18 through 9-22 and motions to implead a third party defendant filed pursuant to Section 10-11; (2) motions to dismiss except those filed pursuant to Section 14-3; (3) motions to strike; (4) motions to set aside judgment filed pursuant to Section 17-4; and (5) motions for summary judgment. Memoranda of law may be filed by other parties on or before the time the matter appears on the short calendar.
(P.B. 1978-1997, Sec. 204.)

Sec. 11-11. Motions which Delay the Commencement of the Appeal Period or Cause the Appeal Period to Start Again

Any motions which would, pursuant to Section 63-1, delay the commencement of the appeal period, and any motions which, pursuant to Section 63-1, would toll the appeal period and cause it to begin again, shall be filed simultaneously insofar as such filing is possible, and shall be considered by the judge who rendered the underlying judgment or decision. The party filing any such motion shall set forth the judgment or decision which is the subject of the motion, the name of the judge who rendered it, the specific grounds upon which the party relies, and shall indicate on the bottom of the first page of the motion that such motion is a Section 11-11 motion. The foregoing applies to motions to reargue decisions that are final judgments for purposes of appeal, but shall

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not apply to motions under Sections 16-35, 16-36 and 11-12.

(P.B. 1978-1997, Sec. 204A.)

Sec. 11-12. Motion to Reargue

(a) A party who wishes to reargue a decision or order rendered by the court shall, within twenty days from the issuance of notice of the rendition of the decision or order, file a motion to reargue setting forth the decision or order which is the subject of the motion, the name of the judge who rendered it, and the specific grounds for reargument upon which the party relies.

(b) The judge who rendered the decision or order may, upon motion of a party and a showing of good cause, extend the time for filing a motion to reargue. Such motion for extension must be filed before the expiration of the twenty day time period in subsection (a).

(c) The motion to reargue shall be considered by the judge who rendered the decision or order. Such judge shall decide, without a hearing, whether the motion to reargue should be granted. If the judge grants the motion, the judge shall schedule the matter for hearing on the relief requested.

(d) This section shall not apply to motions to reargue decisions which are final judgments for purposes of appeal. Such motions shall be filed pursuant to Section 11-11.

(P.B. 1978-1997, Sec. 204B.)

Sec. 11-13. Short Calendar; Need for List; Case Assigned for Trial; Reclaims

(a) Unless otherwise provided in these rules or ordered by the judicial authority, questions as to the terms or form of a decree or judgment to be rendered on the report of a committee or of auditors, or on an award of arbitrators, foreclosures where the only question is as to the time to be limited for redemption, all motions and objections to requests when practicable, and all issues of law must be placed on the short calendar list. No motions will be heard which are not on said list and ought to have been placed thereon; provided that any motion in a case on trial, or assigned for trial, may be disposed of by the judicial authority at its discretion, or ordered upon the short calendar list on terms, or otherwise.

(b) Whenever a short calendar matter or reclaim slip is filed in a case which has been assigned for trial, the filing party shall place the words "assigned for trial" on the bottom of the first page of the document and on any short calendar reclaim slip. The moving party at a short calendar hearing shall, when applicable, inform the judicial authority that the case has been assigned for trial.

(c) If a motion has gone off the short calendar without being adjudicated any party may claim the motion for adjudication. If an objection to a request has gone off the short calendar without being adjudicated, the party who filed the request may claim the objection to the request for adjudication. If a case is on the docket management list, any party may claim any motion or objection for adjudication when the motion or objection must be resolved to close the pleadings.

(P.B. 1978-1997, Sec. 206.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 11-14. —Short Calendar; Frequency; Time; Lists

Short calendar sessions shall be held in each judicial district and geographical area at least once each month, the date, hour and place to be fixed by the presiding judge upon due notice to the clerk. The caseflow coordinator or clerk, in consultation with the presiding judge, shall determine the number of lists, such as whether there shall be separate lists for family relations matters and foreclosures, and whether various portions of any one list shall be scheduled for different days and for different hours of the same day. The lists shall be printed and distributed to attorneys and pro se parties of record in cases appearing therein.

(P.B. 1978-1997, Sec. 207.)

Sec. 11-15. —Short Calendar; Assignments Automatic

Matters to be placed on the short calendar shall be assigned automatically by the clerk without written claim, except as provided in Section 17-31. No such matters shall be so assigned unless filed at least five days before the opening of court on the short calendar day. Motions to dismiss, motions to strike, and motions for summary judgment shall be assigned in accordance with Sections 10-30, 10-40 and 17-45, respectively.

(P.B. 1978-1997, Sec. 208.)

Sec. 11-16. —Continuances when Counsel's Presence or Oral Argument Required

Matters upon the short calendar list requiring oral argument or counsel's presence shall not be continued except for good cause shown; and no such matter in which adverse parties are interested shall be continued unless the parties shall agree thereto before the day of the short calendar session and notify the clerk, who shall make note thereof on the list of the presiding judge; in the absence of such agreement, unless the judicial authority shall otherwise order, any counsel

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appearing may argue the matter and submit it for decision, or request that it be denied.

(P.B. 1978-1997, Sec. 209.)

Sec. 11-17. —Transfers on Short Calendar

Matters on the short calendar list may, by written stipulation of the parties and consent of the judge, be heard and disposed of by any judge in any judicial district, who shall certify the decision to the clerk of the court in which the action is pending, who shall thereupon enter the decision as the order or judgment of the court.

(P.B. 1978-1997, Sec. 210.)

Sec. 11-18. —Oral Argument of Motions in Civil Matters

(a) Oral argument is at the discretion of the judicial authority except as to motions to dismiss, motions to strike, motions for summary judgment, motions for judgment of foreclosure, and motions for judgment on the report of an attorney trial referee and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided:

(1) the motion has been marked ready for adjudication in accordance with the procedure indicated in the notice that accompanies the short calendar on which the motion appears, and

(2) the movant indicates at the bottom of the first page of the motion or on a reclaim slip that oral argument or testimony is desired or

(3) a nonmoving party files and serves on all other parties pursuant to Sections 10-12 through 10-17, with proof of service endorsed thereon, a written notice stating the party's intention to argue the motion or present testimony. Such a notice shall be filed on or before the third day before the date of the short calendar date and shall contain (A) the name of the party filing the motion and (B) the date of the short calendar on which the matter appears.

(b) As to any motion for which oral argument is of right and as to any other motion for which the judicial authority grants or, in its own discretion, requires argument or testimony, the date for argument or testimony shall be set by the judge to whom the motion is assigned.

(c) If a case has been designated for argument as of right or by the judicial authority but a date for argument or testimony has not been set within thirty days of the date the motion was marked ready, the movant may reclaim the motion.

(d) Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise.

(e) Notwithstanding the above, all motions to withdraw appearance shall be set down for oral argument.

(P.B. 1978-1997, Sec. 211.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 11-19. —Time Limit for Deciding Short Calendar Matters

(a) Any judge of the superior court and any judge trial referee to whom a short calendar matter has been submitted for decision, with or without oral argument, shall issue a decision on such matter not later than 120 days from the date of such submission, unless such time limit is waived by the parties. In the event that the judge or referee conducts a hearing on the matter and/or the parties file briefs concerning it, the date of submission for purposes of this section shall be the date the matter is heard or the date the last brief ordered by the court is filed, whichever occurs later. If a decision is not rendered within this period the matter may be claimed in accordance with subsection (b) for assignment to another judge or referee.

(b) A party seeking to invoke the provisions of this section shall not later than fourteen days after the expiration of the 120 day period file with the clerk a motion for reassignment of the undecided short calendar matter which shall set forth the date of submission of the short calendar matter, the name of the judge or referee to whom it was submitted, that a timely decision on the matter has not been rendered, and whether or not oral argument is requested or testimony is required. The failure of a party to file a timely motion for reassignment shall be deemed a waiver by that party of the 120 day time.

(P.B. 1978-1997, Sec. 211A.)

Sec. 11-20. Closure of Courtroom in Civil Cases

(Amended May 14, 2003, to take effect July 1, 2003.)

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding.

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The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be filed not less than fourteen days before the proceeding is scheduled to be heard. Such motion shall be placed on the short calendar so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority. When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled ''Motions to Seal or Close'' and shall also be listed with the time, date and place of the hearing on the judicial branch website. A copy of the short calendar page containing the aforesaid section shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

(f) With the exception of any provision of the General Statutes under which the judicial authority is authorized to close courtroom proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a courtroom proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

(P.B. 1978–1997, Sec. 211B.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005.)

HISTORY—2003: Prior to July 1, 2003, Sec. 11-20 read: ''Exclusion of the Public; Sealing Files Limiting Disclosure of Documents

''(a) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that the public, which may include the news media, be excluded from any portion of a proceeding and shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

''(b) Upon motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a proceeding and may order that files, affidavits, documents or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding or in viewing such materials. Any such order shall be no broader than necessary to protect such overriding interest.

''(c) In connection with any order issued pursuant to subsection (b) of this section, the judicial authority shall, on the record in open court, articulate the overriding interest being protected and shall specify its findings underlying such order. The time and date of any such order shall be entered by the court clerk in the court file together with such order.

''(d) With the exception of orders concerning any session of court conducted pursuant to General Statutes §§ 46b-11, 46b-49, 46b-122 or any other provision of the General Statutes under which the judicial authority is authorized to close proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

''(e) With the exception of orders concerning the confidentiality of records and other papers, issued pursuant to General Statutes § 46b-11 or any other provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

''(f) The provisions of this section shall not apply to settlement agreements which have not been incorporated into a judgment of the court.''

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in civil as well as criminal cases. *Westmoreland* v. *Columbia Broadcasting System, Inc.*, 752 F.2d 16, 22 (2d Cir. 1984); *Publicker Industries, Inc.* v. *Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984). This right is implicit in the first and fourteenth amendments. *Westmoreland* v. *Columbia Broadcasting System, Inc.*, supra, 21. In civil cases, public access to trials ''enhances the quality and safeguards the integrity of the factfinding process . . . fosters an appearance of fairness . . . and heightens public respect for the judicial process . . . while permitting the public to participate in and

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serve as a check upon the judicial process—an essential component in our structure of self government . . . .'' (Citations omitted; internal quotation marks omitted.) Id., 23.

For a further discussion of court closure, see the Commentary to Section 42-49.

Because this section no longer deals with the sealing of documents, subsections (e) and (f) have been transferred, with revisions, to Section 11-20A.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: ''The time, date and scope of any such order shall be in writing and shall be signed by the judicial authority and be entered by the court clerk in the court file.''

COMMENTARY—2005: As used in subsection (a) above, the words ''Except as otherwise provided by law'' are intended to exempt from the operation of this rule all established procedures for the closure of courtroom proceedings as required or permitted by statute; e.g., General Statutes §§ 19a-583 (a) (10) (D) (pertaining to court proceedings as to disclosure of confidential HIV-related information), 36a-21 (b) (pertaining to court proceedings at which certain records of the department of banking are disclosed), 46b-11 (pertaining to hearings in family relations matters), 54-86c (b) (pertaining to the disclosure of exculpatory information or material), 54-86f (pertaining to the admissibility of evidence of sexual conduct) and 54-86g (pertaining to the testimony of a victim of child abuse); other rules of practice; e.g., Practice Book Section 40-43; and/or controlling state or federal case law.

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to close the courtroom in civil matters, will receive timely notice of the court's disposition of such motions. General Statutes § 51-164x (a) gives any person affected by a court closure order in a civil action the right to the review of such order by filing a petition for review with the appellate court within seventy-two hours from the issuance of the order.

Sec. 11-20A. Sealing Files or Limiting Disclosure of Documents in Civil Cases

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction, sealing a portion of the file or authorizing the use of pseudonyms. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

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(g) With the exception of any provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents, or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

(h) (1) Pseudonyms may be used in place of the name of a party or parties only with the prior approval of the judicial authority and only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party or parties. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. The judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by the court clerk in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order. An agreement of the parties that pseudonyms be used shall not constitute a sufficient basis for the issuance of such an order. The authorization of pseudonyms pursuant to this section shall be in place of the names of the parties required by Section 7-4A.

(2) The judicial authority may grant prior to the commencement of the action a temporary ex parte application for permission to use pseudonyms pending a hearing on continuing the use of such pseudonyms to be held not less than fifteen days after the return date of the complaint.

(3) After commencement of the action, a motion for permission to use pseudonyms shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. Leave of the court may be sought to file the motion under seal pending a disposition of the motion by the judicial authority.

(4) Any order allowing the use of a pseudonym in place of the name of a party shall also require the parties to use such pseudonym in all documents filed with the court.

(i) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(j) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled ''Motions to Seal or Close'' and shall also be listed with the time, date and place of the hearing on the judicial branch website. A copy of the short calendar page containing the aforesaid section shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

(Adopted May 14, 2003, to take effect July 1, 2003; amended June 21, 2004, to take effect Jan. 1, 2005.)

COMMENTARY—2003: The public and press enjoy a right of access to attend trials in civil as well as criminal cases. See *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589, 597–608, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978). The guarantee of open public proceedings in civil trials applies as well to the sealing of court documents. See *Publicker Industries, Inc.* v. *Cohen*, 733 F.2d 1059, 1070–71 (3d Cir. 1984).

See also the Commentary to Section 42-49A.

Motions to seal or limit the disclosure of affidavits, documents or other materials in cases on the complex litigation docket shall appear on the regular short calendar for the purpose of providing notice to the public.

As regards the use of pseudonyms set out in subsection (h) of this section, it is clear that such use generally runs afoul of the public's right of access to judicial proceedings. *Does I Thru XXIII* v. *Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). ''Though not as critical as access to the proceedings, knowing the litigants' identities nevertheless tends to sharpen public scrutiny of the judicial process, to increase confidence in the administration of the law, to enhance the therapeutic value of judicial proceedings, and to serve the structural function of the first amendment by enabling informed discussion of judicial operations.'' (Internal quotation marks omitted.) *Doe* v. *Burkland,* 808 A.2d 1090, 1097 (R.I. 2002).

''[M]any federal courts . . . have permitted parties to proceed anonymously when special circumstances justify secrecy. . . . In [the Ninth] [C]ircuit, [parties are allowed] to use pseudonyms in the 'unusual case' when nondisclosure of the party's identity 'is necessary . . . to protect a person from harassment, injury, ridicule or personal embarrassment.' *United States* v. *Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981) . . . .'' (Citations omitted.) *Does I Thru XXIII* v. *Advanced Textile Corp.*, supra, 1067–68. In *Does I Thru XXIII* v. *Advanced Textile Corp.*, supra, 1062, the plaintiffs filed suit under pseudonyms against their employers alleging multiple violations of the Fair Labor Standards Act. The court concluded that in determining whether to allow the use of pseudonyms, the trial court must

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consider the severity of the plaintiffs' threatened injury, the reasonableness of their fears and their vulnerability to retaliation. Id., 1068. In *Doe* v. *Frank*, 951 F.2d 320, 322 (11th Cir. 1992), the plaintiff, a government employee challenging government activity, was denied permission to proceed under a pseudonym which he sought due to his alcoholism. The court concluded that a plaintiff should be permitted to proceed anonymously only in ''exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity. The risk that a plaintiff may suffer some embarrassment is not enough.'' Id., 324. The need for anonymity must outweigh the presumption of openness.

''The privilege of using fictitious names in actions should be granted only in the rare case where the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest.'' See *Buxton* v. *Ullman,* 147 Conn. 48, 60, 156 A.2d 508, appeal dismissed sub nom. *Poe* v. *Ullman*, 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1959) (parties who were medical patients of named plaintiff were allowed to use pseudonyms due to intimate and distressing details alleged in complaint regarding prevention of contraception). Connecticut trial courts applying the *Buxton* holding have concluded that permission to proceed anonymously may be appropriate in situations involving social stigmatization, real danger of physical harm, or risk of an unfair trial. *Doe* v. *Diocese Corp.,* 43 Conn. Sup. 152, 158, 647 A.2d 1067 (1994) (plaintiff was allowed to proceed anonymously in action against defendants for past sexual abuse). Courts have generally concluded that there must be a strong social interest in concealing a party's identity, but the possibility that a litigant may suffer some embarrassment, economic harm, or loss of reputation have been found not to be sufficiently overriding interests to justify anonymity. *ABC, LLC* v. *State Ethics Commission,* Superior Court, judicial district of New Britain, Docket No. CV 000504071S (October 11, 2000).

In *Doe* v. *Connecticut Bar Examining Committee*, 263 Conn. 39, 818 A.2d 14 (2003), the plaintiff sought to proceed anonymously in an action against the defendant in connection with the defendant's failure to recommend the plaintiff for admission to the bar. The supreme court, in determining that the use of a pseudonym in this case should be left to the discretion of the superior court, stated: ''Because lawsuits are public events . . . a plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature. . . . A plaintiff's desire to avoid economic and social harm as well as embarrassment and humiliation in his professional and social community is normally insufficient to permit him to appear without disclosing his identity.'' (Citation omitted; internal quotation marks omitted.) Id., 70.

HISTORY—2005: Prior to 2005, the third sentence of subsection (d) read: ''The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by the court clerk in the court file.''

COMMENTARY—2005: As used in subsection (a) above, the words ''Except as otherwise provided by law'' are intended to exempt from the operation of this rule all established procedures for the sealing or ex parte filing, in camera inspection and/or nondisclosure to the public of documents, records and other materials, as required or permitted by statute; e.g., General Statutes §§ 12-242vv (pertaining to taxpayer information), 52-146c et seq. (pertaining to the disclosure of psychiatric records) and 54-56g (pertaining to the pretrial alcohol education program); other rules of practice; e.g., Practice Book Sections 7-18, 13-5 (6)—(8) and 40-13 (c); and/or controlling state or federal case law; e.g., *Matza* v. *Matza*, 226 Conn. 166, 627 A.2d 414 (1993) (establishing a procedure whereby an attorney seeking to withdraw from a case due to his client's anticipated perjury at trial may support his motion to withdraw by filing a sealed affidavit for the court's review).

The above amendment to subsection (d) establishes a mechanism by which the public and the press, who are empowered by this rule to object to pending motions to seal files or limit the disclosure of documents in civil matters, will receive timely notice of the court's disposition of such motions. General Statutes § 51-164x (c) gives any person affected by a court order sealing a file or limiting the disclosure of a document in a civil action the right to the review of such order by filing a petition for review with the appellate court within seventy-two hours from the issuance of the order.

Sec. 11-21. Motions for Attorney's Fees

Motions for attorney's fees shall be filed with the trial court within thirty days following the date on which the final judgment of the trial court was rendered. If appellate attorney's fees are sought, motions for such fees shall be filed with the trial court within thirty days following the date on which the appellate court or supreme court rendered its decision disposing of the underlying appeal. Nothing in this section shall be deemed to affect an award of attorney's fees assessed as a component of damages.

(Adopted June 29, 1998, to take effect Jan. 1, 1999.)

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CHAPTER 12

TRANSFER OF ACTIONS

Sec.
12-1. Procedure for Transfer
12-2. Transfer of Action Filed in Wrong Location of Correct Court
12-3. Transmission of Files and Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 12-1. Procedure for Transfer

Any cause, or the trial of any issue therein, may be transferred from a judicial district court location to any other judicial district court location or to any geographical area court location, or from a geographical area court location to any other geographical area court location or to any judicial district court location, by order of a judicial authority (1) upon its own motion or upon the granting of a motion of any of the parties, or (2) upon written agreement of the parties filed with the court. (See General Statutes § 51-347b and annotations.)

(P.B. 1978-1997, Sec. 212.)

Sec. 12-2. Transfer of Action Filed in Wrong Location of Correct Court

A clerk of the court of a judicial district or geographical area should not accept a civil cause which is made returnable to a judicial district or geographical area of which such person is not the clerk. A clerk who does accept and enter such a civil cause shall, upon discovery of the error, bring the matter to the attention of the court. The judicial authority shall then order the plaintiff to file a motion to transfer with such notice to the defendant as the judicial authority may direct. If the plaintiff complies, the motion to transfer shall be granted; but if the plaintiff fails to comply with the order of the judicial authority within a reasonable time, the judicial authority shall dismiss the action with costs.

(P.B. 1978-1997, Sec. 213.)

Sec. 12-3. Transmission of Files and Papers

Upon the transfer of any action, the clerk of the court in which such action is pending shall transmit to the clerk of the court to which such cause is transferred the original files and papers in such cause with a certificate of such transfer, who shall enter such cause in the docket of the court to which it is so transferred; and such cause shall thereafter be proceeded with in the same manner as if it were originally brought to such court. When a case which has been claimed for trial is subsequently transferred to another court, a new certificate of closed pleadings shall not be required, and its position on the inventory of pending cases of the transferee court shall be determined by the certificate of closed pleadings date in the original file. Where only the trial of an issue or issues in an action is transferred, the files, after such issues have been disposed of, shall be returned to the clerk of the court where the action originated and judgment may be entered in such court. (See General Statutes § 51-347b; see also Section 14-8.)

(P.B. 1978-1997, Sec. 215.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

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CHAPTER 13

DISCOVERY AND DEPOSITIONS

Sec.
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13-2. Scope of Discovery; In General
13-3. —Materials Prepared in Anticipation of Litigation; Statements of Parties
13-4. —Experts
13-5. —Protective Order
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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 13-1. Definitions

For purposes of this chapter, (1) "statement" means (A) a written statement in the handwriting of the person making it, or signed, or initialed, or otherwise in writing adopted or approved by the person making it; or (B) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and which is contemporaneously recorded; (2) "party" means (A) a person named as a party in the action, or (B) an agent, employee, officer, or director of a public or private corporation, partnership, association, or governmental agency, named as a party in the action; (3) "representative" includes agent, attorney, consultant, indemnitor, insurer, and surety.

(P.B. 1978-1997, Sec. 216.)

Sec. 13-2. Scope of Discovery; In General

In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, a party may obtain in accordance with the provisions of this chapter discovery of information or disclosure, production and inspection of papers, books or documents material to the subject matter involved in the pending action, which are not privileged, whether the discovery or disclosure relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, and which are within the knowledge, possession or power of the party or person to whom the discovery is addressed. Discovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure. It shall not be ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Written opinions of health care providers concerning evidence of medical negligence, as provided by General Statutes § 52-190a, shall not be subject to discovery except as provided in that section.

(P.B. 1978-1997, Sec. 218.)

Sec. 13-3. —Materials Prepared in Anticipation of Litigation; Statements of Parties

(a) Subject to the provisions of Section 13-4, a party may obtain discovery of documents and

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tangible things otherwise discoverable under Section 13-2 and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the judicial authority shall not order disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(b) A party may obtain, without the showing required under this section, discovery of the party's own statement and of any nonprivileged statement of any other party concerning the action or its subject matter.

(P.B. 1978-1997, Sec. 219.)

Sec. 13-4. —Experts

Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Section 13-2 and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) (A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (B) Unless otherwise ordered by the judicial authority upon motion, a party may take the deposition of any expert witness disclosed pursuant to subdivision (1) (A) of this rule in the manner prescribed in Section 13-26 et seq. governing deposition procedure generally.

(2) A party may discover facts known or opinions held by an expert who had been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Section 13-11 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (A) the judicial authority shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (1) (B) and (2) of this rule; and (B) with respect to discovery obtained under subdivision (1) (B) of this rule the judicial authority may require, and with respect to discovery obtained under subdivision (2) of this rule the judicial authority shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(4) In addition to and notwithstanding the provisions of subdivisions (1), (2) and (3) of this rule, any plaintiff expecting to call an expert witness at trial shall disclose the name of that expert, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, to all other parties within a reasonable time prior to trial. Each defendant shall disclose the names of his or her experts in like manner within a reasonable time from the date the plaintiff discloses experts, or, if the plaintiff fails to disclose experts, within a reasonable time prior to trial. If disclosure of the name of any expert expected to testify at trial is not made in accordance with this subdivision, or if an expert witness who is expected to testify is retained or specially employed after a reasonable time prior to trial, such expert shall not testify if, upon motion to preclude such testimony, the judicial authority determines that the late disclosure (A) will cause undue prejudice to the moving party; or (B) will cause undue interference with the orderly progress of trial in the case; or (C) involved bad faith delay of disclosure by the disclosing party. Once the substance of any opinion or opinions of an expert witness who is expected to testify at trial becomes available to the party expecting to call that expert witness, disclosure of expert witness information shall be made in a timely fashion in response to interrogatory requests pursuant to subdivision (1) (A) of this rule, and shall be supplemented as required pursuant to Section 13-15. Any expert witness disclosed pursuant to this rule within six months of the trial date shall be made available for the taking of that expert's deposition within thirty days of the date of such disclosure. In response to any such expert disclosure, any other party may disclose the same categories of information with respect to expert witnesses previously disclosed or a new expert on the same categories of information who are expected to testify at trial on the subject for that party. Any such expert or experts shall similarly be made available for deposition within thirty days of their disclosure. Nothing contained in this rule shall preclude an agreement between the parties

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on disclosure dates which are part of a joint trial management order.

(P.B. 1978-1997, Sec. 220.)

Sec. 13-5. —Protective Order

Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the judicial authority; (6) that a deposition after being sealed be opened only by order of the judicial authority; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judicial authority.

(P.B. 1978-1997, Sec. 221.)

Sec. 13-6. Interrogatories; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 written interrogatories upon any other party to be answered by the party served. Written interrogatories may be served upon any party without leave of the judicial authority at any time after the return day. Except as provided in subsection (c), the party serving interrogatories shall leave sufficient space following each interrogatory in which the party to whom the interrogatories are directed can insert the answer. In the event that an answer requires more space than that provided, it shall be continued on a separate sheet of paper which shall be attached to the completed answers.

(b) Interrogatories may relate to any matters which can be inquired into under Sections 13-2 through 13-5 and the answers may be used at trial to the extent permitted by the rules of evidence. In all personal injury actions alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the ownership, maintenance or control of real property, the interrogatories shall be limited to those set forth in Forms 201, 202 and/or 203 of the rules of practice, unless upon motion, the judicial authority determines that such interrogatories are inappropriate or inadequate in the particular action. These forms are set forth in the Appendix of Forms in this volume. Unless the judicial authority orders otherwise, the frequency of use of interrogatories in all actions except those for which interrogatories have been set forth in Forms 201, 202 and/or 203 of the rules of practice is not limited.

(c) In lieu of serving the interrogatories set forth in Forms 201, 202 and/or 203 on a party who is represented by counsel, the moving party may serve on such party a notice of interrogatories, which shall not include the actual interrogatories to be answered, but shall instead set forth the number of the Practice Book form containing such interrogatories and the name of the party to whom the interrogatories are directed. The party to whom such notice is directed shall in his or her response set forth each interrogatory immediately followed by that party's answer thereto.

(d) The party serving interrogatories or the notice of interrogatories shall not file them with the court.

(P.B. 1978-1997, Sec. 223.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended August 24, 2001, to take effect Jan. 1, 2002.)

Sec. 13-7. —Answers to Interrogatories

(a) Any such interrogatories shall be answered under oath by the party to whom directed and such answers shall not be filed with the court but shall be served within thirty days after the date of certification of service, in accordance with Sections 10-12 through 10-17, of the interrogatories or, if applicable, the notice of interrogatories on the answering party, unless:

(1) Counsel file with the court a written stipulation extending the time within which answers or objections may be served; or

(2) The party to whom the interrogatories are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. Such request shall contain a certification by the requesting party that the case has not been assigned for trial. Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the interrogatories or the notice of interrogatories shall file objection thereto. A party shall be entitled to one such request for each set of interrogatories directed to that party; or

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(3) Upon motion, the judicial authority allows a longer time; or

(4) Objections to the interrogatories and the reasons therefor are filed and served within the thirty-day period.

(b) The party answering interrogatories shall attach a cover sheet to the answers. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the party has answered all of the interrogatories or shall set forth those interrogatories to which the party objects and the reasons for objection. The cover sheet and the answers shall not be filed with the court unless the responding party objects to one or more interrogatories, in which case only the cover sheet shall be so filed.

(c) Objection by a party to certain of the interrogatories directed to such party shall not relieve that party of the obligation to answer the interrogatories to which he or she has not objected within the thirty-day period. All answers to interrogatories shall repeat immediately before each answer the interrogatory being answered. Answers are to be signed by the person making them. The party serving the interrogatories or the notice of interrogatories may move for an order under Section 13-14 with respect to any failure to answer.

(P.B. 1978-1997, Sec. 224.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 13-8. —Objections to Interrogatories

(a) Objections to interrogatories shall be set forth on a cover sheet and be immediately preceded by the interrogatory objected to, shall be signed by the attorney or pro se party making them and shall be 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 and/or 203 of the rules of practice for use in connection with Section 13-6.

(b) 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 accord. 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 interrogatory shall be answered, and the answer served within twenty days after the judicial authority ruling unless otherwise ordered by the judicial authority.

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

(P.B. 1978-1997, Sec. 225.) (Amended August 24, 2001, to take effect Jan. 1, 2002.)

Sec. 13-9. Requests for Production, Inspection and Examination; In General

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, any party may serve in accordance with Sections 10-12 through 10-17 upon any other party a request to afford the party submitting the request the opportunity to inspect, copy, photograph or otherwise reproduce designated documents (including, but not limited to, writings, drawings, graphs, charts, photographs and phonograph records) or to inspect and copy, test or sample any tangible things in the possession, custody or control of the party upon whom the request is served or to permit entry upon designated land or other property for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. Such requests will be governed by the provisions of Sections 13-2 through 13-5. In all personal injury actions alleging liability based on the operation or ownership of a motor vehicle or alleging liability based on the ownership, maintenance or control of real property, the requests for production shall be limited to those set forth in Forms 204, 205 and/or 206 of the rules of practice, unless, upon motion, the judicial authority determines that such requests for production are inappropriate or inadequate in the particular action. These forms are set forth in the Appendix of Forms in this volume.

(b) Requests for production may be served upon any party without leave of court at any time after the return day. In lieu of serving the requests for production set forth in Forms 204, 205 and/or 206 on a party who is represented by counsel, the moving party may serve on such party a notice of requests for production, which shall not include the actual requests, but shall instead set forth the number of the Practice Book form containing such requests and the name of the party to whom the requests are directed.

(c) The request shall clearly designate the items to be inspected either individually or by category. The request or, if applicable, the notice of requests for production shall specify a reasonable time,

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place and manner of making the inspection. Unless the judicial authority orders otherwise, the frequency of use of requests for production in all actions except those for which requests for production have been set forth in Forms 204, 205, and/or 206 of the rules of practice is not limited.

(d) If data has been electronically stored, the judicial authority may for good cause shown order disclosure of the data in an alternative format provided the data is otherwise discoverable. When the judicial authority considers a request for a particular format, the judicial authority may consider the cost of preparing the disclosure in the requested format and may enter an order that one or more parties shall pay the cost of preparing the disclosure.

(e) The party serving such request or notice of requests for production shall not file it with the court.

(f) A party seeking the production of a written authorization in compliance with the Health Insurance Portability and Accountability Act to inspect and make copies of protected health information, or a written authorization in compliance with the Public Health Service Act to inspect and make copies of alcohol and drug records that are protected by that act, shall file a motion pursuant to Section 13-11A. A motion need not be filed to obtain such authorization in actions to which Forms 204 and 205 of the rules of practice apply.

(P.B. 1978-1997, Sec. 227.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended August 24, 2001, to take effect Jan. 1, 2002; amended June 20, 2005, to take effect Jan. 1, 2006.)

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 within thirty 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, unless:

(1) Counsel file with the court a written stipulation extending the time within which responses may be served; or

(2) The party to whom the requests for production are directed, after service in accordance with Sections 10-12 through 10-17, files a request for extension of time, for not more than thirty days, within the initial thirty-day period. Such request shall contain a certification by the requesting party that the case has not been assigned for trial. Such request shall be deemed to have been automatically granted by the judicial authority on the date of filing, unless within ten days of such filing the party who has served the requests for production or the notice of requests for production shall file objection thereto. A party shall be entitled to one such request for each set of requests for production served upon that party; or

(3) Upon motion, the court allows a longer time.

(b) The response of the party shall be inserted directly on the original request served in accordance with Section 13-9 and 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, in which event the reasons for objection shall be stated on a cover sheet as provided herein. If, pursuant to subsection (b) of Section 13-9, a notice of requests for production is served in lieu of requests for production, the party to whom such notice is directed shall in his or her response set forth each request for production immediately followed by that party's response thereto. No objection may be filed with respect to requests for production set forth in Forms 204, 205 and/or 206 of the rules of practice for use in connection with Section 13-9. Where a request calling for submission of copies of documents is not objected to, those copies shall be appended to the copy of the response served upon the party making the request. The responding party shall attach a cover sheet to the response. The cover sheet shall comply with Sections 4-1 and 4-2 and shall state that the responding party will permit all inspection and related activities as requested or shall set forth those requests to which the party objects and the reasons for objection. The cover sheet and the response shall not be filed with the judicial authority unless the responding party objects to one or more requests, in which case only the cover sheet shall be so filed. Objection by a party to certain parts of the request shall not relieve that party of the obligation to respond to those portions to which that party has not objected within the thirty-day period. The party serving the request or the notice of requests for production may move for an order under Section 13-14 with respect to any failure on the part of the party to whom the request or notice is addressed to respond.

(c) No objection to any such request 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 accord. 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

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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 an objection to any part of a request for production is overruled, compliance with the request shall be made at a time to be set by the judicial authority.

(P.B. 1978-1997, Sec. 228.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended August 24, 2001, to take effect Jan. 1, 2002.)

Sec. 13-11. —Physical or Mental Examination

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, in which the mental or physical condition of a party, or of a person in the custody of or under the legal control of a party, is material to the prosecution or defense of said action, the judicial authority may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in the party's custody or legal control.

(b) In the case of an action to recover damages for personal injuries, any party adverse to the plaintiff may file and serve in accordance with Sections 10-12 through 10-17 a request that the plaintiff submit to a physical or mental examination at the expense of the requesting party. That request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. Any such request shall be complied with by the plaintiff unless, within ten days from the filing of the request, the plaintiff files in writing an objection thereto specifying to which portions of said request objection is made and the reasons for said objection. The objection shall be placed on the short calendar list upon the filing thereof. The judicial authority may make such order as is just in connection with the request. No plaintiff shall be compelled to undergo a physical examination by any physician to whom he or she objects in writing.

(c) In any other case, such order may be made only on motion for good cause shown to be heard at short calendar. The motion shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

(d) If requested by the party against whom an order is made under this rule, or who has voluntarily agreed to an examination, the party causing the examination to be made shall deliver to such party a copy of a written report of the examining physician, setting out the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made, or who has voluntarily agreed to an examination, a like report of any examination, previously or thereafter made, of the same condition. The judicial authority on motion may make an order requiring delivery by a party of a report on such terms as are just, and if a physician fails or refuses to make a report the judicial authority may exclude the physician's testimony if offered at the trial.

(e) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives, in that action, or in any other action involving the same controversy, any privilege he or she may have regarding the testimony of every other person who has examined or may thereafter examine the party in respect to the same mental or physical condition.

(f) This section does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other section of this chapter.

(P.B. 1978-1997, Sec. 229.)

Sec. 13-11A. —Motion for Authorization to Obtain Protected Health Information

The judicial authority may, on motion of a party and for good cause shown, order a party to provide a written authorization sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, as that act may from time to time be amended, to inspect and make copies of protected health information.

The judicial authority may, on application of a party that is in compliance with the provisions of the Public Health Service Act and for good cause shown, order a party to provide a written authorization sufficient to comply with the provisions of said act, as that act may from time to time be amended, to inspect and make copies of alcohol and drug records that are protected by that act.

(Adopted June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 13-12. Disclosure of Amount and Provisions of Insurance Liability Policy

In any civil action the existence, contents and policy limits of any insurance policy under which any insurer may be liable to satisfy part or all of a judgment which may be rendered in the action against any party or to indemnify or reimburse any defendant for payments made to satisfy the judgment shall be subject to discovery by any party by interrogatory or request for production

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under Sections 13-6 through 13-11. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial.
(P.B. 1978-1997, Sec. 230.)

Sec. 13-13. Disclosure of Assets in Cases in Which Prejudgment Remedy Sought

(a) The judicial authority may, on motion, order any appearing party against whom a prejudgment remedy has been granted to disclose property in which the party has an interest or debts owing to the party sufficient to satisfy a prejudgment remedy. The existence, location and extent of a party's interest in such property or debts shall be subject to disclosure after hearing on the motion for disclosure. The form and terms of disclosure shall be determined by the judicial authority.

(b) A motion to disclose pursuant to this section may be made by attaching it to the application for a prejudgment remedy or may be made at any time after the filing of the application.

(c) The judicial authority may order disclosure at any time prior to final judgment after it has determined that the party filing the motion for disclosure has, pursuant to either General Statutes §§ 52-278d, 52-278e or 52-278i, probable cause sufficient for the issuance of a prejudgment remedy.

(d) Any party, in lieu of disclosing assets pursuant to subsection (a), may move the judicial authority for substitution either of a bond with surety substantially in compliance with General Statutes §§ 52-307 and 52-308 or of other sufficient security.
(P.B. 1978-1997, Sec. 230A.)

Sec. 13-14. Order for Compliance; Failure to Answer or Comply with Order

(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require.

(b) Such orders may include the following:

(1) The entry of a nonsuit or default against the party failing to comply;

(2) The award to the discovering party of the costs of the motion, including a reasonable attorney's fee;

(3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence;

(5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal.

(c) The failure to comply as described in this section may not be excused on the ground that the discovery is objectionable unless written objection as authorized by Sections 13-6 through 13-11 has been filed.
(P.B. 1978-1997, Sec. 231.)

Sec. 13-15. Continuing Duty to Disclose

If, subsequent to compliance with any request or order for discovery and prior to or during trial, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, that party shall promptly notify the other party, or the other party's attorney, and file and serve in accordance with Sections 10-12 through 10-17 a supplemental or corrected compliance.
(P.B. 1978-1997, Sec. 232.)

Sec. 13-16. Orders by Judge

Any order provided in this chapter to be made by the court may be made by a judge thereof when the court is not actually in session.
(P.B. 1978-1997, Sec. 233.)

Sec. 13-17. Disclosure before Court or Committee

Disclosures by garnishees and all other disclosures in civil actions not under Sections 13-2 through 13-16 may be made to the judicial authority or before a committee, as the judicial authority may determine.
(P.B. 1978-1997, Sec. 234.)

Sec. 13-18. Disclosures in Equity

Disclosures made in answer to complaints in the nature of bills of discovery in equity may be made either by sworn answers or before a committee, as the judicial authority may determine. When either party in any action has obtained from

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the other party a disclosure on oath, respecting the matters alleged in any pleading, the disclosure shall not be deemed conclusive, but may be contradicted as any other testimony. (See General Statutes § 52-200.)

(P.B. 1978-1997, Sec. 235.)

Sec. 13-19. Disclosure of Defense

In any action to foreclose or discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense within five days of the filing of such demand, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed simultaneously but shall be separate motions.

(P.B. 1978-1997, Sec. 236.)

Sec. 13-20. Discovery Sought by Judgment Creditor

(a) A judgment creditor may obtain discovery from the judgment debtor, or from any third person the judgment creditor reasonably believes, in good faith, may have assets of the judgment debtor, or from any financial institution to the extent provided by this section, of any matters relevant to satisfaction of the money judgment. The judgment creditor shall commence any discovery proceeding by serving interrogatories on a form approved by the judges of the superior court, or their designees, on the person from whom discovery is sought. Neither the interrogatories nor a notice thereof shall be filed with the court. The interrogatories shall be in clear and simple language and shall be placed on the page in such manner as to leave space under each interrogatory for the person served to insert the answer. The person to whom interrogatories are directed shall answer them and return them to the judgment creditor within thirty days of the date of service. Answers to interrogatories served on a judgment debtor shall be signed by such debtor under penalty of false statement. With respect to assets, the person served is required to reveal information concerning the amount, nature and location of the judgment debtor's nonexempt assets up to an amount clearly sufficient in value to ensure full satisfaction of the judgment with interest and costs, provided disclosure shall be first required as to assets subject to levy or foreclosure within the state. If interrogatories are served on a financial institution, the financial institution shall disclose only whether it holds funds of the judgment debtor on account and the balance of such funds, up to the amount necessary to satisfy the judgment with interest and costs.

(b) On failure of a person served with interrogatories to, within the thirty days, return a sufficient answer or disclose sufficient assets for execution, or on objection by such person to the interrogatories, which objection shall not be filed with the court by such person, the judgment creditor may move the judicial authority for such supplemental discovery orders as may be necessary to ensure disclosure including (1) an order for compliance with the interrogatories or authorizing additional interrogatories and (2) an order for production or for examination of the judgment debtor or third person, provided any such examination shall be conducted before the judicial authority. The judicial authority may order such discovery as justice requires provided the order shall contain a notice that failure to comply therewith may subject the person served to being held in contempt of court.

(c) On motion of a judgment debtor or third person from whom discovery is sought, and for good cause shown, or on its own motion, the judicial authority may make any order which justice requires to protect such debtor or third person from annoyance, embarrassment, oppression or undue burden or expense.

(d) The other provisions of this chapter shall not apply to discovery sought under this section.

(P.B. 1978-1997, Sec. 236A.)

Sec. 13-21. Discovery Outside the United States of America

(a) If an applicable treaty or convention renders discovery inadequate or inequitable but does not prohibit additional discovery, the judicial authority may order, upon application of any party, discovery on such terms and conditions as the judicial authority deems just and equitable after considering the following:

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(1) other methods of discovery specified or allowed in any applicable international treaty or convention, including any reservations;

(2) whether all applicable international treaties and conventions prohibit one or more specified methods of discovery;

(3) whether the method of discovery violates the criminal law of the foreign nation involved;

(4) whether the foreign nation's procedure will allow the parties to directly apply to the foreign nation's courts for judicial assistance in obtaining discovery;

(5) the importance of the requested documents or other information to the litigation;

(6) the degree of specificity of the request;

(7) whether the information originated within the United States;

(8) the availability of alternate means of obtaining the information;

(9) the extent noncompliance with the request would undermine important interests of the United States;

(10) the extent compliance with the request would undermine important interests of the foreign nation involved;

(11) whether the discovery sought, or the method sought to be employed, is unreasonably intrusive or burdensome under the circumstances;

(12) whether the request can be modified to make it reasonable under the circumstances;

(13) whether the foreign party is wholly or partially owned by a foreign nation or the instrumentality of a foreign nation;

(14) the cost of compliance;

(15) whether the foreign country requires that discovery be obtained through a judicial officer.

(b) As used in this section, discovery includes the taking of testimony by deposition upon oral examination.

(P.B. 1978-1997, Sec. 236B.)

Sec. 13-22. Admission of Facts and Execution of Writings; Requests for Admission

(a) A party may serve in accordance with Sections 10-12 through 10-17 upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters relevant to the subject matter of the pending action set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the existence, due execution and genuineness of any documents described in the request. The party serving a request for admission shall separately set forth each matter of which an admission is requested and shall leave sufficient space following each request in which the party to whom the requests are directed can insert an answer or objection. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the judicial authority, be served upon any party at any time after the return day. Unless the judicial authority orders otherwise, the frequency of use of requests for admission is not limited.

(b) The party serving such request shall not file it with the court but shall instead file a notice with the court which states that the party has served a request for admission on another party, the name of the party to whom the request has been directed and the date upon which service in accordance with Sections 10-12 through 10-17 was made.

(P.B. 1978-1997, Sec. 238.)

Sec. 13-23. —Answers and Objections to Requests for Admission

(a) Each matter of which an admission is requested is admitted unless, within thirty days after the filing of the notice required by Section 13-22 (b), or within such shorter or longer time as the judicial authority may allow, the party to whom the request is directed files and serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. Any such answer or objection shall be inserted directly on the original request. In the event that an answer or objection requires more space than that provided, it shall be continued on a separate sheet of paper which shall be attached to the response. Documents sought to be admitted by the request shall be filed with the response by the responding party only if they are the subject of an answer or objection. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, such party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been

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requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why he or she cannot admit or deny it. The responding party shall attach a cover sheet to the response which shall comply with Sections 4-1 and 4-2 and shall specify those requests to which answers and objections are addressed.

(b) The party who has requested the admission may move to determine the sufficiency of the answer or objection. No such motion 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 motion and that counsel have been unable to reach an accord. Unless the judicial authority determines that an objection is justified, it shall order that an answer be served. If the judicial authority determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The judicial authority may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial.

(P.B. 1978-1997, Sec. 239.)

Sec. 13-24. —Effect of Admission

(a) Any matter admitted under this section is conclusively established unless the judicial authority on motion permits withdrawal or amendment of the admission. The judicial authority may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the judicial authority that withdrawal or amendment will prejudice such party in maintaining his or her action or defense on the merits. Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him or her for any other purpose nor may it be used against him or her in any other proceeding.

(b) The admission of any matter under this section shall not be deemed to waive any objections to its competency or relevancy. An admission of the existence and due execution of a document, unless otherwise expressed, shall be deemed to include an admission of its delivery, and that it has not since been altered.

(P.B. 1978-1997, Sec. 240.)

Sec. 13-25. —Expenses on Failure to Admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested herein, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, such party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The judicial authority shall make the order unless it finds that such failure to admit was reasonable.

(P.B. 1978-1997, Sec. 241.)

Sec. 13-26. Depositions; In General

In addition to other provisions for discovery and subject to the provisions of Sections 13-2 through 13-5, any party who has appeared in a civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, may, at any time after the commencement of the action or proceeding, in accordance with the procedures set forth in this chapter, take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Section 13-28. The attendance of a party deponent or of an officer, director, or managing agent of a party may be compelled by notice to the named person or such person's attorney in accordance with the requirements of Section 13-27 (a). The deposition of a person confined in prison may be taken only by leave of the judicial authority on such terms as the judicial authority prescribes. (See General Statutes § 52-178.)

(P.B. 1978-1997, Sec. 243.)

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

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

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

(c) Leave of a judicial authority is not required for the taking of a deposition by a party if the notice (1) states that the person to be examined is about to go out of this state, or is bound on a voyage to sea, and will be unavailable for examination unless such person's deposition is taken before the expiration of twenty days after the return day, and (2) sets forth facts to support the statement. The party's attorney shall sign the notice, and this signature constitutes a certification by such attorney that to the best of his or her knowledge, information and belief the statement and supporting facts are true.

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

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

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

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

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

(h) A party may in the notice and in the subpoena name as the deponent a public or private corporation or a partnership or an association or a governmental agency or a state officer in an action arising out of the officer's performance of employment and designate with reasonable particularity the matters on which examination is requested. The organization or state officer so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude the taking of a deposition by any other procedure authorized by the rules of practice.

(P.B. 1978-1997, Sec. 244.) (Amended June 26, 2000, to take effect Jan. 1, 2001).

Sec. 13-28. —Persons before Whom Deposition Taken; Subpoenas

(a) Within this state, depositions shall be taken before a judge or clerk of any court, notary public or commissioner of the superior court. In any other state or country, depositions for use in a civil action, probate proceeding or administrative appeal within this state shall be taken before a notary public, of such state or country, a commissioner appointed by the governor of this state, any magistrate having power to administer oaths in such state or country, or a person commissioned by the court before which such action or proceeding is pending, or when such court is not in session, by any judge thereof. Any person so commissioned shall have the power by virtue of his or her commission to administer any necessary oaths and to take testimony. Additionally, if a deposition is to be taken out of the United States, it may be taken before any foreign minister, secretary of a legation, consul or vice-consul appointed by the United States or any person by him or her appointed for the purpose and having authority under the laws of the country where the deposition is to be taken; and the official character of any such person may be proved by a certificate from the secretary of state of the United States.

(b) Each judge or clerk of any court, notary public or commissioner of the superior court, in this state, may issue a subpoena, upon request, for the appearance of any witness before an officer authorized to administer oaths within this state to give testimony at a deposition subject to the provisions of Sections 13-2 through 13-5, if the party seeking to take such person's deposition has complied with the provisions of Sections 13-26 and 13-27.

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(c) A subpoena issued for the taking of a deposition may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents or tangible things which constitute or contain matters within the scope of the examination permitted by Sections 13-2 through 13-5. . Unless otherwise ordered by the court or agreed upon in writing by the parties, any subpoena issued to a person commanding the production of documents or other tangible things at a deposition shall not direct compliance within less than fifteen days from the date of service thereof.

(d) The person to whom a subpoena is directed may, within fifteen days after the service thereof or within such time as otherwise ordered by the court or agreed upon in writing by the parties, serve upon the issuing authority designated in the subpoena written objection to the inspection or copying of any or all of the designated materials. If objection is made, the party at whose request the subpoena was issued shall not be entitled to inspect and copy the disputed materials except pursuant to an order of the court in which the cause is pending. The party who requested the subpoena may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition.

(e) The court in which the cause is pending, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may, upon motion made promptly and, in any event, at or before the time for compliance specified in a subpoena authorized by subsection (b) of this section, (1) quash or modify the subpoena if it is unreasonable and oppressive or if it seeks the production of materials not subject to production under the provisions of subsection (c) of this section, or (2) condition denial of the motion upon the advancement by the party who requested the subpoena of the reasonable cost of producing the materials being sought.

(f) If any person to whom a lawful subpoena is issued under any provision of this section fails without just excuse to comply with any of its terms, the court before which the cause is pending, or any judge thereof, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may issue a capias and cause the person to be brought before that court or judge, as the case may be, and, if the person subpoenaed refuses to comply with the subpoena, the court or judge may commit the person to jail until he or she signifies a willingness to comply with it.

(g) Deposition of witnesses living in this state may be taken in like manner to be used as evidence in a civil action or probate proceeding pending in any court of the United States or of any other state of the United States or of any foreign country, on application of any party to such civil action or probate proceeding.

(P.B. 1978-1997, Sec. 245.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 13-29. —Place of Deposition

(a) Any party who is a resident of this state may be compelled by notice as provided in Section 13-27 (a) to give a deposition at any place within the county of such party's residence, or within thirty miles of such residence, or at such other place as is fixed by order of the judicial authority. A plaintiff who is a resident of this state may also be compelled by like notice to give a deposition at any place within the county where the action is commenced or is pending.

(b) A plaintiff who is not a resident of this state may be compelled by notice under Section 13-27 (a) to attend at the plaintiff's expense an examination in the county of this state where the action is commenced or is pending or at any place within thirty miles of the plaintiff's residence or within the county of his or her residence or in such other place as is fixed by order of the judicial authority.

(c) A defendant who is not a resident of this state may be compelled:

(1) By subpoena to give a deposition in any county in this state in which the defendant is personally served, or

(2) By notice under Section 13-27 (a) to give a deposition at any place within thirty miles of the defendant's residence or within the county of his or her residence or at such other place as is fixed by order of the judicial authority.

(d) A nonparty deponent may be compelled by subpoena served within this state to give a deposition at a place within the county of his or her residence or within thirty miles of the nonparty deponent's residence, or if a nonresident of this state within any county in this state in which he or she is personally served, or at such other place as is fixed by order of the judicial authority.

(e) In this section, the terms ''plaintiff'' and ''defendant'' include officers, directors and managing agents of corporate plaintiffs and corporate defendants or other persons designated under Section 13-27 (h) as appropriate.

(f) If a deponent is an officer, director or managing agent of a corporate party, or other person designated under Section 13-27 (h), the place of

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examination shall be determined as if the residence of the deponent were the residence of the party.

(P.B. 1978-1997, Sec. 246.)

Sec. 13-30. —Deposition Procedure

(a) Examination and cross-examination of deponents may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means authorized in accordance with Section 13-27 (f). If the testimony is taken stenographically, it shall be transcribed at the request of one of the parties.

(b) All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Any objection during a deposition must be stated concisely and in a nonargumentative manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under subsection (c) of this section. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party shall transmit the questions to the officer, who shall propound them to the witness and record the answers verbatim.

(c) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination forthwith to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 13-5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending.

(d) If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Section 13-31 (c) (4) the judicial authority holds that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

(e) The person recording the testimony shall certify on the deposition that the witness was duly sworn by the person, that the deposition is a true record of the testimony given by the deponent, whether each adverse party or his agent was present, and whether each adverse party or his agent was notified, and such person shall also certify the reason for taking the deposition. The person shall then securely seal the deposition in an envelope endorsed with the title of the action, the address of the court where it is to be used and marked "Deposition of (*here insert the name of the deponent*)," shall then promptly deliver it to the party at whose request it was taken and give to all other parties a notice that the deposition has been transcribed and so delivered. The party at whose request the deposition was taken shall file the sealed deposition with the court at the time of trial.

(f) Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (1) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition to the court, pending final disposition of the case.

(g) The parties may stipulate in writing and file with the court, or the court may upon motion order, that a deposition be taken by telephone, videoconference, or other remote electronic means. For the purposes of Sections 13-26 through 13-29 and this section, such a deposition is deemed

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taken at the place where the deponent is to answer questions. Except as otherwise provided in this subsection, the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. The following additional rules, unless otherwise agreed in writing by the parties or ordered by the court, shall apply to depositions taken by remote electronic means:

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties prior to the deposition.

(3) Nothing in subsection (g) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition for the transmission from the location of the deponent and one site for participation of counsel located in the judicial district where the case is pending together with the cost of the stenographic, video or other electronic record. The cost of participation in a remote electronic means deposition from any other location shall be paid by the party or parties participating from such other location.

(h) Notwithstanding this section, a deposition may be attended by any party by remote electronic means even if the party noticing the deposition does not elect to use remote electronic means if (i) a party desiring to attend by remote electronic means provides written notice of such intention to all parties in either the notice of deposition or a notice served in the same manner as a notice of deposition and (ii) if the party electing to participate by remote electronic means is not the party noticing the deposition, such party pays all costs associated with implementing such remote electronic participation by that party.

(i) Nothing contained in any provision providing for the use of remote electronic means depositions shall prohibit any party from securing a representative to be present at the location where the deponent is located to report on the record any events which occur in that location which might not otherwise be transmitted and/or recorded by the electronic means utilized.

(j) The party on whose behalf a deposition is taken shall at such party's expense provide a copy of the deposition transcript and any permanent electronic record including audio or video tape to each adverse party.

(P.B. 1978-1997, Sec. 247.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 13-31. —Use of Depositions in Court Proceedings

(a) Use of Depositions.

At the trial of a civil action, probate proceeding or administrative appeal, or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were there present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of any physician, psychologist, chiropractor, natureopathic physician, osteopathic physician or dentist licensed under the provisions of the General Statutes may be received in evidence in lieu of the appearance of such witness at the trial or hearing whether or not the person is available to testify in person at the trial or hearing.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or managing agent or employee or a person designated under Section 13-27 (h) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(4) The deposition of a witness other than a person falling within the scope of subdivision (2) hereof, whether or not a party, may be used by any party for any purpose if the judicial authority finds: (A) that the witness is dead; (B) that the witness is at a greater distance than thirty miles from the place of trial or hearing, or is out of the state and will not return before the termination of the trial or hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) that the parties have agreed that the deposition may

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be so used; (F) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(6) Substitution of parties does not affect the right to use depositions previously taken; and when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility.

Subject to the provisions of subsection (c) of this section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect and Errors and Irregularities in Depositions.

(1) As to notice: All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer: Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition: (A) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time. (B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(4) As to completion and return of deposition: Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(P.B. 1978-1997, Sec. 248.)

Sec. 13-32. Stipulations regarding Discovery and Deposition Procedure

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used as other depositions, and (2) modify the procedures provided by this chapter for other methods of discovery.

(P.B. 1978-1997, Sec. 249.)

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CHAPTER 14

DOCKETS, TRIAL LISTS, PRETRIALS AND ASSIGNMENT LISTS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 14-1. Claim for Statutory Exemption or Stay by Reason of Bankruptcy

When a claim for a statutory exemption or stay by reason of bankruptcy is filed, it shall be accompanied by an affidavit setting forth the date the bankruptcy petition was filed, the district of the bankruptcy court in which it was filed and the address, the name of the bankruptcy debtor and the number of the bankruptcy case.

When the stay has been relieved or terminated, the plaintiff, the person filing the petition, or any other interested party shall file with the court a copy of the relief or termination of stay issued by the bankruptcy court.

(P.B. 1978-1997, Sec. 250A.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 14-2. Claim for Exemption from Docket Management Program by Reason of Bankruptcy

(Amended June 24, 2002, to take effect Jan. 1, 2003.)

When a claim for an exemption from the docket management program by reason of bankruptcy is filed, it shall be accompanied by an affidavit setting forth the date the bankruptcy petition was filed, the district of the bankruptcy court in which it was filed and the address, the name of the bankruptcy debtor and the number of the bankruptcy case and shall be sworn to by the party claiming the exemption or that party's attorney. An updated affidavit shall be filed every six months by that claimant.

(P.B. 1978-1997, Sec. 250B.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 14-3. Dismissal for Lack of Diligence

(a) If a party shall fail to prosecute an action with reasonable diligence, the judicial authority may, after hearing, on motion by any party to the action pursuant to Section 11-1, or on its own motion, render a judgment dismissing the action with costs. At least two weeks' notice shall be required except in cases appearing on an assignment list for final adjudication. Judgment files shall not be drawn except where an appeal is taken or where any party so requests.

(b) If a case is printed on a docket management calendar pursuant to the docket management program administered under the direction of the chief court administrator, and a motion for default for failure to plead is filed pursuant to Section 10-18, only those papers which close the pleadings by joining issues, or raise a special defense, may be filed by any party, unless the judicial authority otherwise orders.

(P.B. 1978-1997, Sec. 251.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 14-4. Maintenance of Case Records

The clerk in each judicial district and geographical area shall maintain and have available for inspection during office hours a record concerning each civil case and administrative appeal. Such record shall designate whether the pleadings are closed and shall distinguish those cases in which the amount, legal interest or property in demand, is less than $15,000, exclusive of interest and

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costs, from cases in which the amount, legal interest or property in demand, is $15,000 or more, exclusive of interest and costs.

(P.B. 1978-1997, Sec. 254.)

Sec. 14-5. Definition of Administrative Appeals

For the purposes of these rules, administrative appeals are those appeals taken pursuant to statute from decisions of officers, boards, commissions or agencies of the state or of any political subdivision of the state, and include specifically appeals taken pursuant to:

(1) chapter 54 of the General Statutes;

(2) chapters 124 through 134 of the General Statutes; or

(3) other enabling legislation.

(P.B. 1978-1997, Sec. 255.)

Sec. 14-6. Administrative Appeals Are Civil Actions

For purposes of these rules, administrative appeals are civil actions. Whenever these rules refer to civil actions, actions, civil causes, causes or cases, the reference shall include administrative appeals except that: (a) appeals from judgments of the superior court in administrative appeals shall be by certification only as provided by General Statutes § 51-197b as amended, and by chapter 72 of these rules; and (b) an administrative appeal shall not be deemed an action for purposes of General Statutes §§ 52-591, 52-592 or 52-593.

(P.B. 1978-1997, Sec. 256.)

Sec. 14-7. Trial List for Administrative Appeals; Briefs; Placing Cases Thereon

(a) Except as provided in subsections (b), (c) and (d) below, or except as otherwise permitted by the judicial authority in its discretion, in an administrative appeal, the record shall be filed within the time prescribed by statute; the defendant's answer shall be filed within the time prescribed by Section 10-8; the plaintiff's brief shall be filed within thirty days after the filing of the defendant's answer or the return of the record, whichever is later; and the defendant's brief shall be filed within thirty days of the plaintiff's brief. No brief shall exceed thirty-five pages without permission of the judicial authority. A motion for extension of time within which to file the return of record, the answer, or any brief shall be made to the judicial authority before the due date of the filing which is the subject of the motion. The motion shall set forth the reasons therefor and shall contain a statement of the respective positions of the opposing parties with regard to the motion. The motion shall also state whether any previous motion for extension of time was made and the judicial authority's action thereon. If a party fails timely to file the record, answer, or brief in compliance with this subsection, the judicial authority may, on its own motion or on motion of one of the parties, and after hearing, make such order as the ends of justice require. Such orders may include but are not limited to the following or any combination thereof:

(1) An order that the party not in compliance pay the costs of the other parties, including a reasonable attorney's fees;

(2) If the party not in compliance is the plaintiff, an order dismissing the appeal;

(3) If the party not in compliance is a defendant, an order sustaining the appeal, an order remanding the case, or an order dismissing such defendant as a party to the appeal;

(4) If the agency has failed to file the record within the time permitted, an order allowing any other party to prepare and file a record of the administrative proceedings and an order that the agency pay the reasonable costs, including attorney's fees, of such party.

(b) Appeals from the employment security board of review shall follow the procedure set forth in chapter 22 of these rules.

(c) Workers' compensation appeals taken to the appellate court shall follow the procedure set forth in the Rules of Appellate Procedure.

(d) The following administrative appeals shall, subsequent to the filing of the appeal, follow the same course of pleading as that followed in ordinary civil actions:

(1) Appeals from municipal boards of tax review taken pursuant to General Statutes §§ 12-117a and 12-119.

(2) Appeals from municipal assessors taken pursuant to General Statutes § 12-103.

(3) Appeals from the commissioner of revenue services.

(4) Appeals from the insurance commissioner taken pursuant to General Statutes § 38a-139.

(5) Any other appeal in which the parties are entitled to a trial de novo.

(e) Administrative appeals are not subject to the pretrial rules, except as otherwise provided in subsection (f).

(f) All cases properly on the trial list for administrative appeals shall be privileged in respect to assignment and may be subject to pretrial conferences in accordance with Sections 14-11 through 14-14.

(P.B. 1978-1997, Sec. 257.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

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Sec. 14-7A. Withdrawal or Settlement of Zoning and Inland Wetlands Appeals to Superior Court

No appeal under General Statutes §§ 8-8 or 22a-43 shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the superior court and such court has approved such proposed withdrawal or settlement. No decision that is appealed under General Statutes §§ 8-8 or 22a-43 shall be modified by settlement or stipulated judgment unless the terms of the settlement or stipulated judgment have been approved at a public meeting of the municipal agency that issued the decision. The proposed settlement shall be identified on the agenda of such meeting, which agenda shall be posted in accordance with the applicable requirements of General Statutes §§ 1-210 et seq., and the reasons for such approval shall be stated on the record during such public meeting of such agency and before the court. The court may inquire about the procedure followed by the agency, inquire of the parties whether settlement was reached by coercion or intimidation, and consider any other factors that the court deems appropriate. No notice of the court proceeding other than normal publication of the calendar and notice to the parties is required unless otherwise ordered by the court.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY—2007: The above rule is intended to make uniform the procedure to be followed with regard to the withdrawal or settlement of zoning and inland wetland appeals to the superior court.

Sec. 14-8. Certifying That Pleadings Are Closed

(a) A case shall not be scheduled for trial until a party accurately certifies on a form to be supplied by the clerk that the pleadings are closed on the issue or issues in the case as to all parties. Upon receiving such a certification, the clerk shall refer the case to the presiding judge to schedule a trial as soon as the court's docket permits. If claimed as privileged, the ground of privilege as defined in Section 14-9 shall be stated. If the privilege claimed arises from some other statute or rule giving a matter precedence for trial, the applicable provisions shall be cited with specificity.

(b) An administrative appeal may be placed on the administrative appeal trial list without the necessity for a claim, pursuant to Section 14-7.

(c) This section shall not apply to summary process matters.

(P.B. 1978-1997, Sec. 258.)

Sec. 14-9. Privileged Cases in Assignment for Trial

The following classes of cases shall be privileged in respect to assignment for trial: (1) hearings under the fair employment practices act and the labor relations act; (2) all actions, except actions upon probate bonds, brought by or on behalf of the state, including informations on the relation of a private individual; (3) appeals from the employment security board of review; (4) appeals from probate and from the doings of commissioners appointed by courts of probate; (5) actions brought by receivers of insolvent corporations by order of court; (6) actions by or against any person sixty-five years of age or older or who reaches such age during the pendency of the action; (7) appeals from findings, orders or other actions of the public utilities control authority; (8) equitable actions tried to the court wherein the essential claim asserted is for a permanent injunction and any claim for damages or other relief, legal or equitable, is merely in lieu of, or supplemental to, the claim for injunction; (9) habeas corpus proceedings; (10) motions to dissolve temporary injunctions; (11) motions for temporary injunctions; (12) writs of ne exeat, prohibition and mandamus; (13) applications for appointment of receivers; (14) disclosures by garnishees; (15) actions by or against executors, administrators, or trustees in bankruptcy or insolvency; (16) hearings to the court in damages on default or cases where there is an issue as to damages after the judicial authority has granted a summary judgment on the issue of liability; (17) cases remanded by the supreme and appellate courts for a new trial and cases in which a verdict has been set aside, a new trial granted or a mistrial declared; (18) any other actions given precedence by statute or rule.

(P.B. 1978-1997, Sec. 259.)

Sec. 14-10. Claims for Jury

All claims of cases for the jury shall be made in writing, served on all other parties and filed with the clerk within the time allowed by General Statutes § 52-215. The jury claim fee shall be paid at the time the jury claim is filed.

(P.B. 1978-1997, Sec. 260.)

Sec. 14-11. Pretrial; Assignment for Pretrial

(a) Cases in which the pleadings are closed may be assigned by the caseflow coordinator or clerk in consultation with the presiding judge for pretrial.

(b) If there are reasons why a case scheduled for pretrial cannot be pretried effectively, for example in cases in which the extent of the injuries are unknown or discovery has not been completed,

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then the judicial authority shall continue the case to a date certain for pretrial and may limit the time for the completion of discovery.

(P.B. 1978-1997, Sec. 263.)

Sec. 14-12. —When Case Not Disposed of at Pretrial

If the pretrial does not result in the disposition of the case by settlement, judgment by stipulation, or withdrawal, then the judicial authority may (1) continue the matter for a reasonable period if the parties agree to participate in any form of alternative dispute resolution, (2) enter appropriate orders to assure that the case is readied for trial, (3) order the case assigned for trial on a date certain or a week certain in the future or, (4) assign the case to a specific judge for trial on a date certain. The date designated for trial shall, if possible, be agreeable to the parties.

(P.B. 1978-1997, Sec. 264.)

Sec. 14-13. —Pretrial Procedure

The chief court administrator or the presiding judge with the consent of the chief court administrator may designate one or more available judges or judge trial referees to hold pretrial sessions. Parties and their attorneys shall attend the pretrial session; provided, that when a party against whom a claim is made is insured, an insurance adjuster for such insurance company shall be available by telephone at the time of such pretrial session unless the judge or judge referee, in his or her discretion, requires the attendance of the adjuster at the pretrial. If any person fails to attend or to be available by telephone pursuant to this rule, the judicial authority may make such order as the ends of justice require, which may include the entry of a nonsuit or default against the party failing to comply and an award to the complying party of reasonable attorney's fees. Each party claiming damages or seeking relief of any kind, or such party's attorney, shall obtain from the court clerk a pretrial memo form, shall complete the form before the pretrial session and shall, at the commencement of the pretrial session, distribute copies of the completed form to the judge and to each other party. Such pretrial memoranda shall not be placed in the court file unless otherwise ordered by the judicial authority who conducted the pretrial.

The following matters shall be considered at the pretrial session:

(1) A discussion of the possibility of settlement.

(2) Simplification of the issues.

(3) Amendments to pleadings.

(4) Admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial.

(5) The limitation of number of expert witnesses.

(6) Inspection of hospital records and x-ray films.

(7) Exchange of all medical reports, bills and evidences of special damage which have come into possession of the parties or of counsel since compliance with previous motions for disclosure and production for inspection.

(8) Scheduling of a trial management conference and issuance of a trial management order by the judicial authority with reference thereto.

(9) Consideration of alternative dispute resolution options to trial.

(10) Such other procedures as may aid in the disposition of the case, including the exchange of medical reports, and the like, which come into possession of counsel subsequent to the pretrial session.

(P.B. 1978-1997, Sec. 265.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 14-14. —Orders at Pretrial

The judicial authority may make any appropriate order at pretrial, including the issuance of a trial management order, and such order shall control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice. If any party fails to abide by any such order the judicial authority may make such order as the ends of justice require, which may include the entry of a nonsuit or default against the offending party and an award to a complying party of reasonable attorney's fees.

(P.B. 1978-1997, Sec. 268.)

Sec. 14-15. Assignments for Trial in General

Each week a sufficient number of cases shall be assigned to provide business for each trial day of that week. Cases may be assigned for different days and different times of the same day. In determining the number of cases to be assigned, the caseflow coordinator or clerk, in consultation with the presiding judge, will schedule only the number of cases that can reasonably be expected to be tried that week. Cases not reached for trial on the day certain or during the week certain to which they were assigned shall be assigned with priority to a new date, which shall, if possible, be agreeable to the parties.

(P.B. 1978-1997, Sec. 270.)

Sec. 14-16. Methods of Assigning Cases for Trial

(a) In each court location the presiding judge, subject to the approval of the chief court administrator, shall assign to trial judges for trial those

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cases not resolved at pretrial in accordance with Section 14-12.

(b) The presiding judge may, if circumstances require, assign for trial a case that has not been pretried.

(c) Upon request of a party and for good cause shown, the presiding judge may postpone a case or reassign it to another judge.

(P.B. 1978-1997, Sec. 271.)

Sec. 14-17. Immediate Trial

The judicial authority may, on its own motion or on the motion of a party and upon a showing of extraordinary circumstances, order a case to be assigned for immediate trial.

(P.B. 1978-1997, Sec. 273.)

Sec. 14-18. Cases Reached for Trial

When a case is reached on a day or week certain it shall be tried, defaulted, dismissed pursuant to Section 17-19 or nonsuited, unless for good cause shown the judicial authority may assign it for trial on a future date. Such rescheduling shall not displace cases already assigned for trial.

(P.B. 1978-1997, Sec. 274.)

Sec. 14-19. Cases Marked Settled

Any case that does not proceed to trial because it has been reported to the judicial authority as having been settled shall be withdrawn within thirty days or shall be dismissed thereafter unless the judicial authority, for good cause shown, extends the time for a withdrawal.

(P.B. 1978-1997, Sec. 274A.)

Sec. 14-20. Order of Trial

Parties and counsel shall be present and ready to proceed to trial on the day and time specified by the judicial authority. The day specified shall be during the week certain selected by counsel.

(P.B. 1978-1997, Sec. 276.)

Sec. 14-21. Clerk to Communicate with Counsel in Cases Assigned for Week Certain

The caseflow coordinator or clerk, at the direction of the presiding judge, shall communicate with counsel for the parties in the cases assigned for each week certain for trial to keep the court provided with sufficient business for each day the court is in session. Cases shall not be assigned for trial prior to the week certain that has been assigned unless the parties consent.

(P.B. 1978-1997, Sec. 277.)

Sec. 14-22. Assignment for Trial on Motion of Garnishee

When, in an action commenced by process of foreign attachment, the defendant does not appear, if the plaintiff does not take a default in such action within four months after the day on which the process is returnable to such court, the judicial authority may, at any time thereafter, upon motion of any garnishee in such action, assign the same for trial.

(P.B. 1978-1997, Sec. 278.)

Sec. 14-23. Motions to Continue or Postpone Case Assigned for Trial

Whenever a motion for a postponement or continuance of a case assigned for trial is made by either party and such motion is granted, the court may require the party making the same to pay to the adverse party such sum by way of indemnity as it deems reasonable. (See General Statutes § 52-196.)

(P.B. 1978-1997, Sec. 279.)

Sec. 14-24. Motion to Postpone; Absent Witness; Missing Evidence

(a) Whenever a motion is made for the postponement or continuance of a cause assigned for trial on account of the absence of a material witness, such motion, if the adverse party or the judicial authority requires it, shall be supported by an affidavit stating the name of the absent witness, if known, and the particular facts which, it is believed, may be proved by him or her, with the grounds of such belief. The judicial authority may refuse to continue such cause if there is no good reason why the party making the request did not make proper preparation to have the witness present or if the adverse party will admit that the absent witness would, if present, testify to the facts stated in the affidavit, and will agree that the same shall be received as evidence on the trial, in like manner as if the witness were present and had testified thereto. Such agreement shall be made in writing at the foot of the affidavit and signed by the party or attorney.

(b) The same rule shall apply where the motion is grounded on the want of any material document or other evidence that might be used on the trial.

(P.B. 1978-1997, Sec. 280.)

Sec. 14-25. Availability of Counsel for Trial

Whenever an attorney has cases assigned simultaneously before the court and jury, the jury assignment shall take precedence over the court assignment unless the attorney is actually engaged in the court trial.

(P.B. 1978-1997, Sec. 281.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

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CHAPTER 15

TRIALS IN GENERAL; ARGUMENT BY COUNSEL

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15-1. Order of Trial
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15-3. Motion in Limine
15-4. Medical Evidence
15-5. Order of Parties Proceeding at Trial
15-6. Opening Argument
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15-8. Dismissal in Court Cases for Failure to Make Out a Prima Facie Case

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 15-1. Order of Trial

In all cases, whether entered upon the docket as jury cases or court cases, the judicial authority may order that one or more of the issues joined be tried before the others. Where the pleadings in an action present issues both of law and of fact, the issues of law must be tried first, unless the judicial authority otherwise directs. If some, but not all, of the issues in a cause are put to the jury, the remaining issue or issues shall be tried first, unless the judicial authority otherwise directs. (See General Statutes § 52-205 and annotations.)

(P.B. 1978-1997, Sec. 283.)

Sec. 15-2. Separate Trials

The judicial authority may, upon motion, for good cause shown, order a separate trial between any parties.

(P.B. 1978-1997, Sec. 284.)

Sec. 15-3. Motion in Limine

The judicial authority to whom a case has been assigned for trial may in its discretion entertain a motion in limine made by any party regarding the admission or exclusion of anticipated evidence. If a case has not yet been assigned for trial, a judicial authority may, for good cause shown, entertain the motion. Such motion shall be in writing and shall describe the anticipated evidence and the prejudice which may result therefrom. All interested parties shall be afforded an opportunity to be heard regarding the motion and the relief requested. The judicial authority may grant the relief sought in the motion or such other relief as it may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding.

(P.B. 1978-1997, Sec. 284A.)

Sec. 15-4. Medical Evidence

A party who plans to offer a hospital record in evidence shall have the record in the clerk's office twenty-four hours prior to trial. The judge holding the civil jury shall, at the opening session, order that all such records be available for inspection in the clerk's office to any counsel of record under the supervision of the clerk. Counsel must recognize their responsibility to have medical testimony available when needed and shall, when necessary, subpoena medical witnesses to that end.

(P.B. 1978-1997, Sec. 290.)

Sec. 15-5. Order of Parties Proceeding at Trial

(a) Unless the judicial authority for cause permits otherwise, the parties shall proceed with the trial and argument in the following order:

(1) The plaintiff shall present a case in chief.

(2) The defendant may present a case in chief.

(3) The plaintiff and the defendant may present rebuttal evidence in successive rebuttals, as required. The judicial authority for cause may permit a party to present evidence not of a rebuttal nature, and if the plaintiff is permitted to present further evidence in chief, the defendant may respond with further evidence in chief.

(4) The plaintiff shall be entitled to make the opening and final closing arguments.

(5) The defendant may make a single closing argument following the opening argument of the plaintiff.

(b) If there are two or more plaintiffs or two or more defendants and they do not agree as to their order of proceeding, the judicial authority shall determine their order.

(P.B. 1978-1997, Sec. 295.)

Sec. 15-6. Opening Argument

Instead of reading the pleadings, counsel for any party shall be permitted to make a brief opening statement to the jury in jury cases, or in a court case at the discretion of the presiding judge, to apprise the trier in general terms as to the nature of the case being presented for trial. The

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presiding judge shall have discretion as to the latitude of the statements of counsel.

(P.B. 1978-1997, Sec. 296.)

Sec. 15-7. Time Limit on Argument

The argument on behalf of any party shall not occupy more than one hour, unless the judicial authority, on motion for special cause, before the commencement of such argument, allows a longer time. (See General Statutes § 52-209 and annotations.)

(P.B. 1978-1997, Sec. 297.)

Sec. 15-8. Dismissal in Court Cases for Failure to Make Out a Prima Facie Case

If, on the trial of any issue of fact in a civil action tried to the court, the plaintiff has produced evidence and rested his or her cause, the defendant may move for judgment of dismissal, and the judicial authority may grant such motion, if in its opinion the plaintiff has failed to make out a prima facie case. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made.

(P.B. 1978-1997, Sec. 302.)

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CHAPTER 16

JURY TRIALS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 16-1. Deaf or Hearing Impaired Jurors

At the request of a deaf or hearing impaired juror or the judicial authority, an interpreter or interpreters provided by the Commission on the Deaf and Hearing Impaired and qualified under General Statutes § 46a-33a shall assist such juror during the juror orientation program and all subsequent proceedings, and when the jury assembles for deliberation.

(P.B. 1978-1997, Sec. 303A.)

Sec. 16-2. Challenge to Array

Any party may challenge an array on the ground that there has been a material departure from the requirements of law governing the selection and summoning of an array. Such challenge shall be made within five days after notification of the hearing or trial date, unless the defect claimed has arisen subsequent to the time required to make such motion.

(P.B. 1998.)

Sec. 16-3. Preliminary Proceedings in Jury Selection

The judicial authority shall cause prospective jurors to be sworn or affirmed in accordance with General Statutes, §§ 1-23 and 1-25. The judicial authority shall require counsel to make a preliminary statement as to the names of other counsel with whom he or she is affiliated and other relevant facts, and shall require counsel to disclose the names, and if ordered by the judicial authority, the addresses of all witnesses counsel intends to call at trial. The judicial authority may excuse any prospective juror for cause.

(See Sec. 303C, P.B. 1978-1997.) (P.B. 1998.)

Sec. 16-4. Disqualification of Jurors and Selection of Panel

(a) A person shall be disqualified to serve as a juror if such person is found by the judicial authority to exhibit any quality which will impair this person's capacity to serve as a juror, except that no person shall be disqualified on the basis of deafness or hearing impairment.

(b) The clerks shall keep a list of all persons disqualified under this section and shall send a copy of that list to the jury administrator at such time as the jury administrator may direct.

(c) The clerk of the court, in impaneling the jury for the trial of each cause, shall, when more jurors are in attendance than are required of the panel, designate by lot those who shall compose the panel.

(P.B. 1978-1997, Sec. 303, 304.)

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Sec. 16-5. Peremptory Challenges

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.

(P.B. 1998.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 16-6. Voir Dire Examination

Each party shall have the right to examine, personally or by counsel, each juror outside the presence of other prospective jurors as to qualifications to sit as a juror in the action, or as to the person's interest, if any, in the subject matter of the action, or as to the person's relations with the parties thereto. If the judicial authority before whom such examination is held is of the opinion from such examination that any juror would be unable to render a fair and impartial verdict, such juror shall be excused by the judicial authority from any further service upon the panel, or in such action, as the judicial authority determines. The right of such examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of the trial.

(P.B. 1978-1997, Sec. 305.)

Sec. 16-7. Juror Questions and Note Taking

The members of the jury may, in the discretion of the judicial authority, take notes and submit questions to be asked of witnesses during the trial of a civil action.

(P.B. 1978-1997, Sec. 305A.)

Sec. 16-8. Oath and Admonitions to Trial Jurors

(a) The judicial authority shall cause the jurors selected for the trial to be sworn or affirmed in accordance with General Statutes, §§ 1-23 and 1-25. The judicial authority shall admonish the jurors not to read, listen to or view news reports of the case or to discuss with each other or with any person not a member of the jury the cause under consideration, except that after the case has been submitted to the jury for deliberation the jurors shall discuss it among themselves in the jury room.

(b) In the presence of the jury, the judicial authority shall instruct any interpreter for a deaf or hearing impaired juror to refrain from participating in any manner in the deliberations of the jury and to refrain from having any communications, oral or visual, with any member of the jury except for the literal translation of jurors' remarks made during deliberations.

(P.B. 1998.)

Sec. 16-9. Questions of Law and Fact

The judicial authority shall decide all issues of law and all questions of law arising in the trial of any issue of fact; and, in committing the cause to the jury, shall direct them to find accordingly, and shall submit all questions of fact to the jury, with such observations on the evidence, for their information, as it thinks proper, without any direction how they shall find the facts. After the cause has been committed to the jury, no pleas, arguments or evidence shall be received before the verdict is returned into court and recorded. (See General Statutes § 52-216 and annotations.)

(P.B. 1978-1997, Sec. 306.)

Sec. 16-10. Order by Judicial Authority for Jury Trial of Factual Issues in Equitable Actions

No issues of fact in an equitable action shall be tried to the jury except upon order of the judicial authority. Upon the application of any party, the judicial authority may order any issue or issues of fact in any action demanding equitable relief to be tried by a jury, and such application shall be deemed to be a request for a jury of six. (See General Statutes § 52-218 and annotations.)

(P.B. 1978-1997, Sec. 307.)

Sec. 16-11. Cases Presenting Both Legal and Equitable Issues

A case presenting issues both in equity and law may be claimed for the jury list, but, unless the judicial authority otherwise orders, only the issues at law shall be assigned for trial by the jury. Whenever such an action has been placed upon the

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docket as a jury case, no determination of the equitable issues raised by the pleadings shall prevent a jury trial of the claim for damages, unless both parties agree in writing to waive a jury, or unless the determination of the equitable issues has necessarily adjudicated all the facts upon which the claim for damages rests. (See General Statutes § 52-219 and annotations.)

(P.B. 1978-1997, Sec. 308.)

Sec. 16-12. View by Jury of Place or Thing Involved in Case

When the judicial authority is of the opinion that a viewing by the jury of the place or thing involved in the case will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the closing arguments, order that the jury be conducted to such place or location of such thing. During the viewing the jury must be kept together under the supervision of a proper officer appointed by the judicial authority. The judicial authority and a court reporter must be present, and, with the judicial authority's permission, any other person may be present. Counsel and pro se parties may as a matter of right be present, but the right may be waived. The purpose of viewing shall be solely to permit visual observation by the jury of the place or thing in question and to permit a brief description of the site or thing being viewed by the judicial authority or by any witness or witnesses as allowed by the judicial authority. Any proceedings at the location, including examination of witnesses, shall be at the discretion of the judicial authority. Neither the parties nor counsel nor the jurors while viewing the place or thing may engage in discussion of the significance or the implications of anything under observation or of any issue in the case.

(See Sec. 844, P.B. 1978-1997.) (P.B.1998.)

Sec. 16-13. Judgment of the Court

(a) Where a complaint embracing matters calling for both legal and equitable relief is by order of the judicial authority tried to the jury, the judicial authority may render judgment, either for legal or equitable relief or both, not inconsistent with the verdict.

(b) When an issue or issues of fact are determined by the verdict, the judge presiding at the trial shall, if possible, upon the evidence produced and after hearing the claims and arguments of counsel, determine the other issues in the case and render final judgment at the session at which the verdict is rendered.

(c) If additional evidence is required, the judge presiding at the trial shall, if possible, hear this and render final judgment at said session.

(P.B. 1978-1997, Sec. 309.)

Sec. 16-14. Communications between Parties and Jurors

No party, and no attorney, employee, representative or agent of any party or attorney, shall contact, communicate with or interview any juror or alternate juror, or any relative, friend or associate of any juror or alternate juror concerning the deliberations or verdict of the jury or of any individual juror or alternate juror in any action during trial until the jury has returned a verdict and/or the jury has been dismissed by the judicial authority, except upon leave of the judicial authority, which shall be granted only upon the showing of good cause. A violation of this section may be treated as a contempt of court, and may be punished accordingly.

(P.B. 1978-1997, Sec. 309A.)

Sec. 16-15. Materials to Be Submitted to Jury

(a) The judicial authority shall submit to the jury all exhibits received in evidence.

(b) The judicial authority may, in its discretion, submit to the jury:

(1) The complaint, counterclaim and cross complaint, and responsive pleadings thereto;

(2) A copy or tape recording of the judicial authority's instructions to the jury;

(3) Upon request by the jury, a copy or tape recording of an appropriate portion of the judicial authority's instructions to the jury.

(P.B. 1978-1997, Sec. 309B.)

Sec. 16-16. Jury Deliberations

After the case has been submitted to the jury, the jury shall be in the custody of an officer who shall permit no person to be present with them or to speak to them when assembled for deliberations except a qualified interpreter assisting a deaf or hearing impaired juror. The jurors shall be kept together for deliberations as the judicial authority reasonably directs. If the judicial authority permits the jury to recess their deliberations, it shall admonish the jury not to discuss the case until they reconvene in the jury room. The judicial authority shall direct the jury to select one of their members to preside over the deliberations and to deliver any verdict agreed upon, and the judicial authority shall admonish the jury that until they are discharged in the case they may communicate upon subjects connected with the trial only while they are convened in the jury room. If written forms of verdict are submitted to the jury, the member of the jury selected to deliver the verdict shall sign any verdict agreed upon.

(See Sec. 856, P.B. 1978-1997.) (P.B. 1998)

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Sec. 16-17. Jury Returned for Reconsideration

The judicial authority may, if it determines that the jury have mistaken the evidence in the cause and have brought in a verdict contrary to it, or have brought in a verdict contrary to the direction of the judicial authority in a matter of law, return them to a second consideration, and for like reason may return them to a third consideration, and no more. (See General Statutes § 52-223 and annotations.)

(P.B. 1978-1997, Sec. 311.)

Sec. 16-18. Interrogatories to the Jury

The judicial authority may submit to the jury written interrogatories for the purpose of explaining or limiting a general verdict, which shall be answered and delivered to the clerk as a part of the verdict. The clerk will take the verdict and then the answers to the several interrogatories, and thereafter the clerk will take the judicial authority's acceptance of the verdict returned and the questions as answered, and proceed according to the usual practice. The judicial authority will not accept a verdict until the interrogatories which are essential to the verdict have been answered.

(P.B. 1978-1997, Sec. 312.)

Sec. 16-19. Reading of Statement of Amount in Demand or Statement of Claim; Arguing Amount Recoverable

In any action seeking damages for injury to the person, the amount demanded in the complaint shall not be disclosed to the jury. In the event that the jury shall return a verdict which exceeds the amount demanded, the judicial authority shall reduce the award to, and render judgment in, the amount demanded. Counsel for any party to the action may articulate to the jury during closing argument a lump sum or mathematical formula as to damages claimed to be recoverable. The judicial authority shall issue cautionary instructions pursuant to General Statutes § 52-216b.

(P.B. 1978-1997, Sec. 313.)

Sec. 16-20. Requests to Charge and Exceptions; Necessity for

An appellate court shall not be bound to consider error as to the giving of, or the failure to give, an instruction unless the matter is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered. Counsel taking the exception shall state distinctly the matter objected to and the ground of objection. The exception shall be taken out of the hearing of the jury.

(P.B. 1978-1997, Sec. 315.)

Sec. 16-21. —Requests to Charge on Specific Claims

Any party intending to claim the benefit of the doctrines of supervening negligence, superseding cause, intervening cause, assumption of risk, or the provisions of any specific statute shall file a written request to charge on the legal principle involved.

(P.B. 1978-1997, Sec. 316.)

Sec. 16-22. —Filing Requests

Written requests to charge the jury and written requests for jury interrogatories must be filed with the clerk before the beginning of arguments or at such an earlier time as the judicial authority directs, and the clerk shall file them and forthwith hand one copy to the judicial authority and one to opposing counsel. A party's request to charge may be amended in writing as a matter of right at any time prior to the beginning of the charge conference.

(P.B. 1978-1997, Sec. 317.)

Sec. 16-23. —Form and Contents of Requests to Charge

(a) When there are several requests, they shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based, and the evidence to which the proposition would apply. Requests to charge should not exceed fifteen in number unless, for good cause shown, the judicial authority permits the filing of an additional number. If the request is granted, the judicial authority shall apply the proposition of law to the facts of the case.

(b) A principle of law should be stated in but one request and in but one way. Requests attempting to state in different forms the same principle of law as applied to a single issue are improper.

(P.B. 1978-1997, Sec. 318.)

Sec. 16-24. —Charge Conference

After the close of evidence but before arguments to the jury, the judicial authority shall, if requested, inform counsel out of the presence of the jury of the substance of its proposed instructions.

(P.B. 1978-1997, Sec. 318A.)

Sec. 16-25. Modification of Instructions for Correction or Clarification

The judicial authority, after exceptions to the charge, or upon its own motion, may recall the jury to the courtroom and give them additional instructions in order to:

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(1) Correct or withdraw an erroneous instruction;

(2) Clarify an ambiguous instruction; or

(3) Instruct the jury on any matter which should have been covered in the original instructions.

(P.B. 1998; see Sec. 860.)

Sec. 16-26. Other Instructions after Additional Instructions

If the judicial authority gives additional instructions, it also may give or repeat other instructions in order to avoid undue emphasis on the additional instructions. Additional instructions shall be governed by the procedures set forth in Section 16-25 concerning exceptions.

(See Sec. 861, P.B. 1978-1997.) (P.B. 1998.)

Sec. 16-27. Jury Request for Review of Testimony

If the jury after retiring for deliberations request a review of certain testimony, they shall be conducted to the courtroom. Whenever the jury's request is reasonable, the judicial authority, after notice to and consultation with counsel, shall have the requested parts of the testimony read to the jury.

(See Sec. 863, P.B. 1978-1997.) (P.B. 1998.)

Sec. 16-28. Jury Request for Additional Instructions

If the jury, after retiring for deliberations, request additional instructions, the judicial authority, after providing notice to the parties and an opportunity for suggestions by counsel, shall recall the jury to the courtroom and give additional instructions necessary to respond properly to the request or to direct the jury's attention to a portion of the original instructions.

(See Sec. 864, P.B. 1978-1997.) (P.B. 1998.)

Sec. 16-29. Deadlocked Jury

If it appears to the judicial authority that the jury have been unable to agree, it may require the jury to continue their deliberations. The judicial authority shall not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals. It may also instruct the jury as to disagreements in accordance with the law.

(See Sec. 865, P.B. 1978-1997.) (P.B. 1998.)

Sec. 16-30. Verdict; Return of Verdict

The verdict shall be unanimous and shall be announced by the jury in open court.

(See Sec. 867, P.B. 1978-1997.) (P.B. 1998.)

Sec. 16-31. —Acceptance of Verdict

Subject to the provisions of Section 16-17, the judicial authority shall, if the verdict is in order and is technically correct, accept it without comment.

(See Sec. 868, P.B. 1978-1997.) (P.B. 1998; amended June 29, 1998, to take effect Jan.1, 1999.)

Sec. 16-32. —Poll of Jury after Verdict

Subject to the provisions of Section 16-17, after a verdict has been returned and before the jury have been discharged, the jury shall be polled at the request of any party or upon the judicial authority's own motion. The poll shall be conducted by the clerk of the court by asking each juror individually whether the verdict announced is such juror's verdict. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or they may be discharged.

(See Sec. 869, P.B. 1978-1997.) (P.B. 1998; amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 16-33. —Discharge of Jury

Subject to the provisions of Section 16-17, the judicial authority shall discharge the jury after they have rendered their verdict or after a mistrial has been declared.

(See Sec. 870, P.B. 1978-1997.) (P.B. 1998; amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 16-34. —Impeachment of Verdict

Upon an inquiry into the validity of a verdict, no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of a juror nor any evidence concerning mental processes by which the verdict was determined. Subject to these limitations, a juror's testimony or affidavit shall be received when it concerns any misconduct which by law permits a jury to be impeached.

(See Sec. 871, P.B. 1978-1997.) (P.B. 1998.)

Sec. 16-35. Motions after Verdict: Motions in Arrest of Judgment, to Set Aside Verdict, for Additur or Remittitur, for New Trial, or for Collateral Source Reduction

Motions in arrest of judgment, whether for extrinsic causes or causes apparent on the record, motions to set aside a verdict, motions for remittitur, motions for additur, motions for new trials, unless brought by petition served on the adverse party or parties, and motions pursuant to General Statutes § 52-225a for reduction of the verdict due to collateral source payments must be filed with the clerk within ten days after the day the verdict is accepted; provided that for good cause the judicial authority may extend this time. The clerk shall notify the trial judge of such filing.

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Such motions shall state the specific grounds upon which counsel relies.

(P.B. 1978-1997, Sec. 320.)

Sec. 16-36. Motions to Reduce Verdict

Motions to reduce the amount of a verdict or award pursuant to General Statutes §§ 52-225a or 52-216a shall be filed within ten days after the day the verdict or award is accepted and shall be heard by the judge who conducted the trial. In matters referred to an arbitrator under the provisions of Section 23-61, motions to reduce the amount of an award shall be filed within ten days after the decision of the arbitrator becomes a judgment of the court pursuant to subsection (a) of Section 23-66.

(P.B. 1978-1997, Sec. 320A.) (Amended June 28, 1999, on an interim basis pursuant to the provisions of Sec. 1-9 (c) to take effect Jan. 1, 2000, and amendment adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 16-37. Reservation of Decision on Motion for Directed Verdict

Whenever a motion for a directed verdict made at any time after the close of the plaintiff's case in chief is denied or for any reason is not granted, the judicial authority is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. After the acceptance of a verdict and within the time stated in Section 16-35 for filing a motion to set a verdict aside, a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered in accordance with his or her motion for a directed verdict; or if a verdict was not returned such party may move for judgment in accordance with his or her motion for a directed verdict within the aforesaid time after the jury have been discharged from consideration of the case. If a verdict was returned the judicial authority may allow the judgment to stand or may set the verdict aside and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the judicial authority may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(P.B. 1978-1997, Sec. 321.)

Sec. 16-38. Memorandum on Setting Verdict Aside

When the judicial authority grants a motion to set a verdict aside, it shall file a memorandum stating the grounds of its decision.

(P.B. 1978-1997, Sec. 322.)

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CHAPTER 17

JUDGMENTS

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17-58.	—Declaratory Judgment Appealable
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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 17-1. Judgments in General

In all actions, whether the relief sought be legal or equitable in its nature, judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and the judicial authority may grant to a defendant any affirmative relief to which the defendant may be entitled, and may determine the rights of the parties on each side as between themselves insofar as a consideration of the issues between them is necessary to a full adjudication as regards the claim stated in the complaint. (See General Statutes § 52-227.)

(P.B. 1978-1997, Sec. 323.)

Sec. 17-2. Judgment on Verdict and Otherwise

The judicial authority shall render judgment on all verdicts of the jury, according to the jury's finding, subject to statutory adjustments, with costs, unless the verdict is set aside; and in all cases where judgment is rendered otherwise than on a verdict, in favor of the plaintiff, the court shall assess the damages which the plaintiff shall recover. If no motions under Sections 16-35 or 16-36 are filed, upon the expiration of the time provided for the filing of such motions, judgment on the verdict shall be rendered in accordance with the verdict, and the date of the judgment shall be the date the verdict was accepted. If motions

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are filed pursuant to Sections 16-35 or 16-36, judgment shall be rendered at the time of and in accordance with the decision on such motions. Whenever a judgment is rendered in a civil jury case, the clerk shall send notice of such judgment to all attorneys and pro se parties of record. (See General Statutes § 52-225 and annotations.)
(P.B. 1978-1997, Sec. 324.)

Sec. 17-3. Remittitur where Judgment Too Large

If any judgment is rendered, by mistake or clerical error, for a larger sum than is due, the excess may be remitted by the party recovering the judgment, at any time, reasonable notice being first given to the adverse party or that party's attorney; and the judicial authority may thereupon order the record of such judgment to be corrected, and affirm the same for the amount to which it has been remitted. (See General Statutes § 52-228 and annotations.)
(P.B. 1978-1997, Sec. 325.)

Sec. 17-4. Setting Aside or Opening Judgments

(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court.

(b) Upon the filing of a motion to open or set aside a civil judgment, except a judgment in a small claims or juvenile matter, the moving party shall pay to the clerk the filing fee prescribed by statute unless such fee has been waived by the judicial authority.
(P.B. 1978-1997, Sec. 326.)

Sec. 17-4A. Motions for New Trial

Motions for new trials in cases tried to the court, unless brought by petition served on the adverse party or parties, must be filed with the clerk within ten days after the day the judgment is rendered; provided that for good cause the judicial authority may extend this time. The clerk shall notify the trial judge of such filing. Such motions shall state the specific grounds upon which counsel relies.
(Adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 17-5. Record of Proceeding; Facts Supporting Judgment to Appear on Record

Each judicial authority shall keep a record of its proceedings and cause the facts on which it found its final judgments and decrees to appear on the record; and any such finding if requested by any party shall specially set forth such facts. (See General Statutes § 52-231 and annotations.)
(P.B. 1978-1997, Sec. 327.)

Sec. 17-6. Form of Finding

When all the material allegations put in issue in any action, whether brought for legal or for equitable relief, are found for either plaintiff or defendant, the finding of the issue or issues for the plaintiff or defendant, as the case may be, will be deemed equivalent to a finding that all material allegations which were put in issue are true, and will be a sufficient compliance with Section 17-5. Where only a part of the material allegations put in issue by the pleadings are found for the prevailing party the judgment must indicate the particular facts that are found.
(P.B. 1978-1997, Sec. 328.)

Sec. 17-7. Special Finding; Request

A request for a special finding of facts under General Statutes § 52-226, shall be by written motion filed in duplicate within fourteen days after the entry of judgment.
(P.B. 1978-1997, Sec. 332.)

Sec. 17-8. —Functions of Special Finding

A special finding of facts under Section 17-5 should rarely be requested or made but when made it becomes a part of the record with the same effect as though the facts were included in the judgment and claims of error may be based upon it as appearing of record. If the special finding is insufficient to support the judgment, the error is one upon the record. The purpose of a special finding is to place upon the record the material facts upon which the judgment is based; other matters have no place in it and can only be presented in a finding made for the purpose of an appeal. A special finding is an incident to the judgment, and interlocutory rulings should not be included in it. The rules as to seeking corrections in a finding for an appeal have no application to a special finding.
(P.B. 1978-1997, Sec. 333.)

Sec. 17-9. —Form and Contents of Special Finding

The special findings of fact required by Section 17-5 to be made, if requested, as an incident to the judgment should ordinarily form a part of the judgment file. It should contain only facts material to the issues tried. When any fact upon which final judgment is founded is simply a bare conclusion of law from more detailed and subordinate facts, as, for instance, in cases of constructive fraud, the finding, if a special one be requested, must

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specially set forth the subordinate facts from which, as such conclusion of law, the judicial authority finds the principal fact. In such cases the finding should be such as distinctly to show any conclusion of law thus drawn. When a material fact is found from more detailed or subordinate facts, not as a conclusion of law but as a conclusion of fact, only the main or resulting fact should be set forth in the finding.

(P.B. 1978-1997, Sec. 334.)

Sec. 17-10. Modifying Judgment after Appeal

If a judgment fixing a set time for the performance of an act is affirmed on appeal by the supreme court and such time has elapsed pending the appeal, the judicial authority which rendered the judgment appealed from may, on motion and after due notice, modify it by extending the time.

(P.B. 1978-1997, Sec. 340.)

Sec. 17-11. Offer of Compromise by Defendant; How Made

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

In any action on contract, or seeking the recovery of money damages, whether or not other relief is sought, the defendant may not later than thirty days before the commencement of jury selection in a jury trial or before the commencement of evidence in a court trial file with the clerk of the court a written offer of compromise signed by the defendant or the defendant's attorney, directed to the plaintiff or the plaintiff's attorney, offering to settle the claim underlying the action for a sum certain. (See General Statutes § 52-193 and annotations.)

(P.B. 1978-1997, Sec. 342.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this section was "Offer of Judgment by Defendant; How Made." In 2007, the phrase "offer of compromise" was substituted for the word "notice," before the phrase "signed by the defendant." In the last clause of the section, after the phrase "offering to," the words "settle the claim underlying the action for a sum certain" were substituted for "allow the plaintiff to take judgment for the sum named in such notice."

COMMENTARY—2007: The changes to Sections 17-11 through 17-18 are intended to adopt certain provisions of Public Act 05-275.

Sec. 17-12. —Acceptance of Defendant's Offer

The plaintiff may, within sixty days after being notified by the defendant of the filing of an offer of compromise, file with the clerk of the court a written acceptance of the offer signed by the plaintiff or the plaintiff's attorney agreeing to settle the underlying action for the sum certain specified in the defendant's offer of compromise. Upon the filing of the written acceptance and receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the clerk of the court and the clerk shall record the withdrawal of the action against the defendant accordingly. No trial shall be postponed because the period within which the plaintiff may accept such offer has not expired, except at the discretion of the judicial authority. (See General Statutes § 52-194 and annotations.)

(P.B. 1978-1997, Sec. 343.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this section read: "The plaintiff may, within ten days after being notified by the defendant of the filing of such offer, file with the clerk of the court a written acceptance of such offer signed by the plaintiff or the plaintiff's attorney. Such written acceptance being filed, the judicial authority shall render judgment against the defendant as upon default for the sum so named and for the costs accrued at the time of the defendant's giving the plaintiff notice of such offer. No trial shall be postponed because the period within which the plaintiff may accept such offer has not expired, except at the discretion of the judicial authority. (See General Statutes § 52-194 and annotations.)"

Sec. 17-13. —Defendant's Offer Not Accepted

If the plaintiff does not, within the time allowed for acceptance of the offer of compromise and before any evidence is offered at the trial, file the plaintiff's notice of acceptance, the offer shall be deemed to be withdrawn and shall not be given in evidence; and the plaintiff, unless recovering more than the sum specified in the offer, with interest from its date, shall recover no costs accruing after the plaintiff received notice of the filing of such offer, but shall pay the defendant's costs accruing after said time. Such costs may include reasonable attorney's fees in an amount not to exceed $350. Nothing in this section shall be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action. The provisions of this section shall not apply to cases in which nominal damages have been assessed upon a hearing after a default or after a motion to strike has been denied. (See General Statutes § 52-195 and annotations.)

(P.B. 1978-1997, Sec. 344.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the first sentence of this section read: "If the plaintiff does not, within said time and before any evidence is offered at the trial, file a notice of acceptance, such offer shall be deemed to be withdrawn and shall not be given in evidence; and the plaintiff, unless recovering more than the sum named in such offer, with interest from its date, shall recover no costs accruing after having received notice of the filing of such offer, but shall pay the defendant's costs accruing after said time."

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Sec. 17-14. Offer of Compromise by Plaintiff; How Made

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not earlier than one hundred eighty days after service of process is made upon the defendant in such action but not later than thirty days before the commencement of jury selection in a jury trial or the commencement of evidence in a court trial, file with the clerk of the court a written offer of compromise signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying the action for a sum certain. The plaintiff shall give notice of such offer of compromise to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant.

(P.B. 1978-1997, Sec. 346.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this section was ''Offer of Judgment by Plaintiff; How Made,'' and the section read: ''After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, not later than thirty days before the commencement of jury selection in a jury trial or the commencement of evidence in a court trial, file with the clerk of the court a written ''offer of judgment'' signed by the plaintiff or the plaintiff's attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying such action and to stipulate to a judgment for a sum certain. The plaintiff shall give notice of such offer of settlement to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant.''

Sec. 17-14A. —Alleged Negligence of Health Care Provider

In the case of any action to recover damages resulting from personal injury or wrongful death, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, an offer of compromise pursuant to Section 17-14 shall state with specificity all damages then known to the plaintiff or the plaintiff's attorney upon which the action is based. At least sixty days prior to filing such an offer, the plaintiff or the plaintiff's attorney shall provide the defendant or the defendant's attorney with an authorization to disclose medical records that meets the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) (HIPAA), as amended from time to time, or regulations adopted thereunder, and disclose any and all expert witnesses who will testify as to the prevailing professional standard of care. The plaintiff shall file with the court a certification that the plaintiff has provided each defendant or such defendant's attorney with all documentation supporting such damages.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

Sec. 17-15. —Acceptance of Plaintiff's Offer

Within thirty days after being notified of the filing of such offer of compromise and prior to the rendering of a verdict by the jury or an award by the judicial authority, the defendant or the defendant's attorney may file with the clerk of the court a written acceptance of the offer of compromise agreeing to settle the claim underlying the action for the sum certain specified in the plaintiff's offer. Upon such filing and the receipt by the plaintiff of such sum certain, the plaintiff shall file a withdrawal of the action with the clerk and the clerk shall record the withdrawal of the action against the defendant accordingly.

(P.B. 1978-1997, Sec. 347.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, this section read: ''Within sixty days after being notified of the filing of such 'offer of judgment' and prior to the rendering of a verdict by the jury or an award by the judicial authority, the defendant or the defendant's attorney may file with the clerk of the court a written 'acceptance of offer of judgment' agreeing to a stipulation for judgment as contained in the plaintiff's 'offer of judgment.' Upon such filing, the judicial authority shall render judgment forthwith on the stipulation.''

Sec. 17-16. —Plaintiff's Offer Not Accepted

If such offer of compromise is not accepted within thirty days and prior to the rendering of a verdict by the jury or an award by the judicial authority, such offer of compromise shall be considered rejected and not subject to acceptance unless refiled.

(P.B. 1978-1997, Sec. 348.) (Amended June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect, Jan. 1, 2007.)

HISTORY—2007: In 2007, the phrase "offer of compromise" was substituted for '' 'offer of judgment' '' at the beginning of the sentence, after the words ''[i]f such'' and at the end of the sentence, before the words ''shall be considered rejected.'' The word ''thirty'' was substituted for ''sixty'' before the word ''days.''

Sec. 17-17. —Offer of Compromise and Acceptance Included in Record

(Amended June 26, 2006, to take effect Jan. 1, 2007.)

Any such offer of compromise and any acceptance of the offer of compromise shall be included by the clerk in the record of the case.

(P.B. 1978-1997, Sec. 349.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: Prior to 2007, the title of this section was ''Offer of Judgment and Acceptance Included in Record.'' In 2007, the phrase ''offer of compromise'' was substituted for '' 'offer of judgment' '' and the phrase "acceptance of the offer of compromise" was substituted for the phrase '' 'acceptance of offer of judgment.' ''

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Sec. 17-18. —Judgment where Plaintiff Recovers an Amount Equal to or Greater than Offer

After trial the judicial authority shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the judicial authority ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in that plaintiff's offer of compromise, the judicial authority shall add to the amount so recovered 8 percent annual interest on said amount, computed as provided in General Statutes § 52-192a, may award reasonable attorney's fees in an amount not to exceed $350, and shall render judgment accordingly. Nothing in this section shall be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action.

(P.B. 1978-1997, Sec. 350.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the phrase "offer of compromise" was substituted for " 'offer of judgment' " in the first sentence, after the phrase "whether the plaintiff made an" and in the second sentence, after the phrase "specified in that plaintiff's." In addition, the word "specified" was substituted for the word "stated" in the second sentence, after the phrase "the sum certain."

Sec. 17-19. Procedure where Party Fails to Comply with Order of Judicial Authority or to Appear for Trial

If a party fails to comply with an order of a judicial authority or a citation to appear or fails without proper excuse to appear in person or by counsel for trial, the party may be nonsuited or defaulted by the judicial authority.

(P.B. 1978-1997, Sec. 351.)

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

(a) If no appearance has been entered for any party to any action on or before the second day following the return day, any other party to the action may make a motion that a nonsuit or default be entered for failure to appear.

(b) It shall be the responsibility of counsel filing a motion for default for failure to appear to serve the defaulting party with a copy of the motion. Service and proof thereof may be made in accordance with Sections 10-12, 10-13 and 10-14. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(c) Except as provided in Sections 17-23 through 17-30, motions for default for failure to appear shall be acted on by the clerk upon filing and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance. The provisions of Section 17-21 shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default. If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law. A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection, except as provided in Sections 17-23 through 17-30.

(d) A motion for nonsuit for failure to appear shall be printed on the short calendar. If it is proper to grant the motion, the judicial authority shall grant it without the need for the moving party to appear at the short calendar.

(e) The granting of a motion for nonsuit for failure to appear or a motion for judgment after default for failure to appear shall be subject to the provisions of Sections 9-1 and 17-21. Such motion shall contain either (1) a statement that a military affidavit is attached thereto, or (2) a statement, with reasons therefor, that it is not necessary to attach a military affidavit to the motion.

(P.B. 1978-1997, Sec. 352.) (Amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 17-21. Defaults under Servicemembers Civil Relief Act

(a) An affidavit must be filed in every case in which there is a nonappearing defendant, either (1) stating that such defendant is in military service, within the meaning of the Servicemembers Civil Relief Act, or that the plaintiff is unable to determine whether or not such defendant is in such service, or (2) setting forth facts showing that such defendant is not in such service.

(b) If it appears that the defendant is in such service the judicial authority shall, and if it is undetermined whether the defendant is in such service or not the judicial authority may, appoint an attorney to represent such defendant before judgment is rendered. No such attorney shall have the power to waive any right of the person for whom he or she is appointed or to bind such person by his or her acts.

(c) Unless it appears that the defendant is not in such service, the judicial authority may require as a condition before judgment is rendered that the plaintiff file a bond approved by the judicial authority conditioned to indemnify the defendant, if in military service, against any loss or damage that such defendant may suffer by reason of any

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judgment should the judgment be thereafter set aside in whole or in part.

(d) If it appears that the defendant is in military service, the judicial authority shall grant a stay of proceedings for a minimum period of 90 days upon application of counsel or on the judicial authority's own motion, if the judicial authority determines that: (1) there may be a defense to the action which cannot be presented without the defendant's presence, or (2) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) If the defendant is in military service or is within 90 days after termination of or release from such service and has received notice of the proceedings, the following provisions apply. At any stage before final judgment the judicial authority may on its own motion and shall, upon application by the defendant, stay the action for a period of not less than 90 days if the application includes (1) a letter or other communication containing facts stating how current military duty requirements materially affect the defendant's ability to appear and stating a date when the defendant will be able to appear, and (2) a letter or other communication from the defendant's commanding officer stating that current military duty prevents appearance and that military leave is not authorized at the time of the letter.

(f) (1) A defendant who is granted a stay under subsection (e) may apply for an additional stay based on the continuing material effect of military duty on the defendant's ability to appear. The application may be made at the time of the initial application or when it appears that the defendant is unable to appear to defend the action. The application shall include the same information required under subparagraphs (1) and (2) of subsection (e).

(2) If the judicial authority denies the application for an additional stay, the judicial authority shall appoint counsel to represent the defendant.

(g) The findings made under the six preceding subsections shall be recited in the judgment.

(h) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense.

(P.B. 1978-1997, Sec. 353.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 17-22. Notice of Judgments of Nonsuit and Default for Failure to Enter an Appearance

A notice of every nonsuit for failure to enter an appearance or judgment after default for failure to enter an appearance, which notice includes the terms of the judgment, shall be mailed within ten days of the entry of judgment by counsel of the prevailing party to the party against whom it is directed and a copy of such notice shall be sent to the clerk's office. Proof of service shall be in accordance with Section 10-14.

(P.B. 1978-1997, Sec. 354.)

Sec. 17-23. Contract Actions to Pay a Definite Sum where There is a Default for Failure to Appear; Limitations

Sections 17-24 through 17-27 shall not be applicable to: (1) any action wherein any defendant against whom judgment is sought is in the military or naval service of the United States when judgment is rendered; or (2) any action brought under the small claims rules.

(P.B. 1978-1997, Sec. 356.)

Sec. 17-24. —Promise to Pay Liquidated Sum

(a) In any action based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorney's fee and other lawful charges, the procedure set forth in Section 17-20 and in Sections 17-25 through 17-28 shall be followed, if there is a default of appearance. A certificate of closed pleadings shall not be filed in matters which fall within the scope of these rules because such matters shall not proceed on the inventory of pending cases requiring a hearing in damages.

(b) When moving for default and judgment pursuant to Sections 17-25 through 17-28, a party shall move for default and judgment on forms prescribed by the office of the chief court administrator.

(P.B. 1978-1997, Sec. 357.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 17-25. —Motion for Default and Judgment; Affidavit of Debt; Military Affidavit; Bill of Costs; Debt Instrument

(a) The plaintiff shall file a motion for default for failure to appear, judgment and, if applicable, an order for weekly payments. The motion shall have attached to it an affidavit of debt, a military affidavit, a bill of costs and a proposed judgment and notice to all parties. The proposed notice of judgment shall be filed in duplicate.

(b) If the instrument on which the contract is based is a negotiable instrument, the affidavit shall state that the instrument is now owned by the plaintiff, and a copy of the executed instrument shall be attached to the affidavit. If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which

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the interest is computed, which shall not be later than the date of the entry of judgment.

(c) If the moving party claims any lawful charges other than interest, including a reasonable attorney's fee, the affidavit of debt shall set forth the terms of the contract providing for such charge and the amount claimed. If a claim for a reasonable attorney's fee is made, the moving party shall include in the affidavit of debt the reasons for the specific amount requested in order that the judicial authority may determine the relationship between the fee requested and the actual and reasonable costs which are incurred by counsel and a copy of the contract shall be attached to the affidavit.

(P.B. 1978-1997, Sec. 358.)

Sec. 17-26. —Order for Weekly Payments

If the moving party seeks and is entitled to an order for payments under the General Statutes in excess of a nominal amount, the judicial authority may make, as part of the judgment, an order for weekly payment of such sums as shall appear to the judicial authority to be reasonable. If such order is sought, the proposed notice and form of judgment shall contain substantially the following language: It is further adjudged that the defendant make weekly payments of $ on this judgment to commencing on .

(P.B. 1978-1997, Sec. 359.)

Sec. 17-27. —Entry of Judgment

Upon receipt of the motion and affidavits, the clerk shall bring the motion and affidavits to the attention of the judicial authority. If the judicial authority orders judgment entered, the clerk shall complete the proposed judgment and notice to all parties in accordance with the terms of the judgment. The clerk shall immediately mail or deliver one copy of the judgment and notice to all parties to the plaintiff or plaintiff's attorney.

(P.B. 1978-1997, Sec. 360.)

Sec. 17-28. —Enforcement of Judgment

Execution upon such judgment shall be stayed until twenty days after the clerk receives from the plaintiff, or plaintiff's attorney, one copy of the judgment and notice to all parties, with a certification that one copy thereof was served upon each judgment debtor. Service and proof thereof must be made in accordance with Sections 10-12 through 10-14.

(P.B. 1978-1997, Sec. 361.)

Sec. 17-29. —Default Motion Not on Short Calendar

No motion for default and judgment filed under Sections 17-24 through 17-28 shall be printed on the short calendar, unless the judicial authority shall so order. No short calendar claim shall be filed with this motion. Other than as provided for in those sections and in Section 17-20 no notice of a default or of a judgment after default shall be required in connection with any such motion.

(P.B. 1978-1997, Sec. 362.)

Sec. 17-30. Summary Process; Default and Judgment for Failure to Appear or Plead

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

(a) If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions.

(b) If the defendant in a summary process action appears but does not plead within two days after the return day or within three days after the filing of the preceding pleading or motion, the plaintiff may file a motion for judgment for failure to plead, served in accordance with Sections 10-12 through 10-17. If the defendant fails to plead within three days after receipt of such motion by the clerk, the judicial authority shall forthwith enter judgment that the plaintiff recover possession or occupancy with costs.

(P.B. 1978-1997, Sec. 362A.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 17-31. Procedure where Party is in Default

Where either party is in default by reason of failure to comply with Sections 10-8, 10-35, 13-6 through 13-8, 13-9 through 13-11, the adverse party may file a written motion for a nonsuit or default or, where applicable, an order pursuant to Section 13-14. Except as otherwise provided in Sections 17-30 and 17-32, any such motion, after service upon each adverse party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, shall be filed with the clerk of the court in which the action is pending, and, unless the pleading in default be filed or the disclosure be made within ten days thereafter, the clerk shall, upon the filing of a short calendar claim by the moving party, place the motion on the next available short calendar list.

(P.B. 1978-1997, Sec. 363.)

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Sec. 17-32. Where Defendant is in Default for Failure to Plead

(a) Where a defendant is in default for failure to plead pursuant to Section 10-8, the plaintiff may file a written motion for default which shall be acted on by the clerk upon filing, without placement on the short calendar.

(b) If a party who has been defaulted under this section files an answer before a judgment after default has been rendered by the judicial authority, the clerk shall set aside the default. If a claim for a hearing in damages or a motion for judgment has been filed the default may be set aside only by the judicial authority. A claim for a hearing in damages or motion for judgment shall not be filed before the expiration of fifteen days from the date of notice of issuance of the default under this subsection.

(P.B. 1978-1997, Sec. 363A.)

Sec. 17-33. When Judgment May Be Rendered after a Default

(a) If a defendant is defaulted for failure to appear for trial, evidence may be introduced and judgment rendered without notice to the defendant.

(b) Since the effect of a default is to preclude the defendant from making any further defense in the case so far as liability is concerned, the judicial authority, at or after the time it renders the default, notwithstanding Section 17-32 (b), may also render judgment in foreclosure cases, in actions similar thereto, in summary process actions, and in any contract action where the damages are liquidated, provided the plaintiff has also made a motion for judgment and provided further that any necessary affidavits of debt or accounts or statements verified by oath, in proper form, are submitted to the judicial authority.

(c) If the taking of testimony is required, the procedures in Section 17-34 shall be followed before judgment is rendered.

(P.B. 1978-1997, Sec. 364.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 17-34. Hearings in Damages; Notice of Defenses

(a) In any hearing in damages upon default, the defendant shall not be permitted to offer evidence to contradict any allegations in the plaintiff's complaint, except such as relate to the amount of damages, unless notice has been given to the plaintiff of the intention to contradict such allegations and of the subject matter which the defendant intends to contradict, nor shall the defendant be permitted to deny the right of the plaintiff to maintain such action, nor shall the defendant be permitted to prove any matter of defense, unless written notice has been given to the plaintiff of the intention to deny such right or to prove such matter of defense.

(b) This notice shall apply to defaults entered on all claims, counterclaims, cross claims, and other claims for affirmative relief. (See General Statutes § 52-221 and annotations.)

(P.B. 1978-1997, Sec. 367.)

Sec. 17-35. —Requirements of Notice; Time

(a) The notices required by Section 17-34 shall be given in the manner provided in Sections 10-12 through 10-14, the original with proof of service being filed with the clerk.

(b) In all actions in which there may be a hearing in damages, notice of defenses must be filed within ten days after notice from the clerk to the defendant that a default has been entered.

(P.B. 1978-1997, Sec. 368.)

Sec. 17-36. —Notice by Clerk

The clerk shall give notice of entry of a default, in the case of a defendant who has filed an appearance, in person to the defendant or the defendant's attorney, by mail, or by electronic notice, and in the case of a nonappearing defendant, by mailing such notice to the defendant at his or her last known address. The clerk shall enter on the docket the date when the clerk gives, mails or sends the notice, and said period of ten days shall run from said date.

(P.B. 1978-1997, Sec. 369.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 17-37. —Notice of Defense to Be Specific

The notice shall not contain a general denial, but shall specify which, if any, of the allegations, or parts thereof, of the complaint will be controverted; and only those allegations should be specified which it is intended to controvert by proof. The denial of the right of the plaintiff to maintain the action must go to the plaintiff's right to maintain it in the capacity in which the plaintiff sues, and not otherwise controvert the right of action. Any new matter by way of confession and avoidance must be specified. The defense of contributory negligence must be specified and the grounds stated. Partial defenses must be specified in the same manner as complete defenses.

(P.B. 1978-1997, Sec. 371.)

Sec. 17-38. —Amending Notice of Defense

The judicial authority may, for cause shown, and upon such terms as it may impose, permit such notice to be filed or amended at any time.

(P.B. 1978-1997, Sec. 372.)

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Sec. 17-39. —No Reply Allowed

The plaintiff shall file no pleading to such notice, but may meet the facts set up therein by any proper evidence.

(P.B. 1978-1997, Sec. 373.)

Sec. 17-40. —Evidence to Reduce Damages

The defendant may, without notice, offer evidence to reduce the amount of damages claimed.

(P.B. 1978-1997, Sec. 374.)

Sec. 17-41. Relief Permissible on Default

Upon a default, the plaintiff can have no greater relief than that demanded in the complaint; but in any other case the judicial authority may, upon a proper amendment, grant the plaintiff any other relief consistent with the case made on the trial and embraced within the issues.

(P.B. 1978-1997, Sec. 375.)

Sec. 17-42. Opening Defaults where Judgment Has Not Been Rendered

A motion to set aside a default where no judgment has been rendered may be granted by the judicial authority for good cause shown upon such terms as it may impose. As part of its order the judicial authority may extend the time for filing pleadings or disclosure in favor of a party who has not been negligent. Certain defaults may be set aside by the clerk pursuant to Sections 17-20 and 17-32.

(P.B. 1978-1997, Sec. 376.)

Sec. 17-43. Opening Judgment upon Default or Nonsuit

(a) Any judgment rendered or decree passed upon a default or nonsuit may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear. The judicial authority shall order reasonable notice of the pendency of such written motion to be given to the adverse party, and may enjoin that party against enforcing such judgment or decree until the decision upon such written motion.

(b) If the judicial authority opens a nonsuit entered pursuant to Section 17-31, the judicial authority as part of its order may extend the time for filing pleadings or disclosure. (See General Statutes § 52-212.)

(P.B. 1978-1997, Sec. 377.)

Sec. 17-44. Summary Judgments; Scope of Remedy

In any action, except administrative appeals which are not enumerated in Section 14-7, any party may move for a summary judgment at any time, except that the party must obtain the judicial authority's permission to file a motion for summary judgment after the case has been assigned for trial. These rules shall be applicable to counterclaims and cross complaints, so that any party may move for summary judgment upon any counterclaim or cross complaint as if it were an independent action. The pendency of a motion for summary judgment shall delay trial only at the discretion of the trial judge.

(P.B. 1978-1997, Sec. 379.)

Sec. 17-45. —Proceedings upon Motion for Summary Judgment; Request for Extension of Time to Respond

(Amended June 30, 2003, to take effect Jan. 1, 2004.)

A motion for summary judgment shall be supported by such documents as may be appropriate, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions and the like. The motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion and the supporting materials, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant such request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request. Any adverse party shall at least five days before the date the motion is to be considered on the short calendar file opposing affidavits and other available documentary evidence. Affidavits, and other documentary proof not already a part of the file, shall be filed and served as are pleadings.

(P.B. 1978-1997, Sec. 380.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 30, 2003, to take effect Jan. 1, 2004; amended June 21, 2004, to take effect Jan. 1, 2005.)

Sec. 17-46. —Form of Affidavits

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such

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facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto.
(P.B. 1978-1997, Sec. 381.)

Sec. 17-47. —When Appropriate Documents Are Unavailable

Should it appear from the affidavits of a party opposing the motion that such party cannot, for reasons stated, present facts essential to justify opposition, the judicial authority may deny the motion for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.
(P.B. 1978-1997, Sec. 382.)

Sec. 17-48. —Affidavits Made in Bad Faith

Should it appear to the satisfaction of the judicial authority at any time that any affidavit is made or presented in bad faith or solely for the purpose of delay, the judicial authority shall forthwith order the offending party to pay to the other party the reasonable expenses which the filing of the affidavit caused that party to incur, including attorney's fees. Any offending party or attorney may be adjudged guilty of contempt, and any offending attorney may also be disciplined by the judicial authority.
(P.B. 1978-1997, Sec. 383.)

Sec. 17-49. —Judgment

The judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
(P.B. 1978-1997, Sec. 384.)

Sec. 17-50. —Triable Issue as to Damages Only

A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to damages. In such case the judicial authority shall order an immediate hearing before a judge trial referee, before the court, or before a jury, whichever may be proper, to determine the amount of the damages. If the determination is by a jury, the usual procedure for setting aside the verdict shall be applicable. Upon the conclusion of these proceedings, the judicial authority shall forthwith render the appropriate summary judgment.
(P.B. 1978-1997, Sec. 385.)

Sec. 17-51. —Judgment for Part of Claim

If it appears that the defense applies to only part of the claim, or that any part is admitted, the moving party may have final judgment forthwith for so much of the claim as the defense does not apply to, or as is admitted, on such terms as may be just; and the action may be severed and proceeded with as respects the remainder of the claim.
(P.B. 1978-1997, Sec. 386.)

Sec. 17-52. Executions

Pursuant to the General Statutes, the judgment creditor or the attorney for the judgment creditor may file a written application with the court for an execution to collect an unsatisfied money judgment.
(P.B. 1978-1997, Sec. 387.)

Sec. 17-53. Summary Process Executions

Whenever a summary process execution is requested because of a violation of a term in a judgment by stipulation or a judgment with a stay of execution beyond the statutory stay, a hearing shall be required. If the violation consists of nonpayment of a sum certain, an affidavit with service certified in accordance with Sections 10-12 through 10-17 shall be accepted in lieu of a hearing unless an objection to the execution is filed by the defendant prior to the issuance of the execution. The execution shall issue on the third business day after the filing of the affidavit.
(P.B. 1978-1997, Sec. 387A.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 17-54. Declaratory Judgment; Scope

The judicial authority will, in cases not herein excepted, render declaratory judgments as to the existence or nonexistence (1) of any right, power, privilege or immunity; or (2) of any fact upon which the existence or nonexistence of such right, power, privilege or immunity does or may depend, whether such right, power, privilege or immunity now exists or will arise in the future.
(P.B. 1978-1997, Sec. 389.)

Sec. 17-55. —Conditions for Declaratory Judgment

A declaratory judgment action may be maintained if all of the following conditions have been met:

(1) The party seeking the declaratory judgment has an interest, legal or equitable, by reason of danger of loss or of uncertainty as to the party's rights or other jural relations;

(2) There is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties; and

(3) In the event that there is another form of proceeding that can provide the party seeking the

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declaratory judgment immediate redress, the court is of the opinion that such party should be allowed to proceed with the claim for declaratory judgment despite the existence of such alternate procedure.

(P.B. 1978-1997, Sec. 390.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 17-56. —Procedure for Declaratory Judgment

(a) Procedure in actions seeking a declaratory judgment shall be as follows:

(1) The form and practice prescribed for civil actions shall be followed.

(2) The prayer for relief shall state with precision the declaratory judgment desired and no claim for consequential relief need be made.

(3) Actions claiming coercive relief may also be accompanied by a claim for a declaratory judgment, either as an alternative remedy or as an independent remedy.

(4) Subject to the provisions of Sections 10-21 through 10-24, causes of action for other relief may be joined in complaints seeking declaratory judgments.

(5) The defendant in any appropriate action may seek a declaratory judgment by a counterclaim.

(6) Issues of fact necessary to the determination of the cause may be submitted to the jury as in other actions.

(b) All persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interest of one or more of the plaintiffs or defendants in the action shall be made parties to the action or shall be given reasonable notice thereof. If the proceeding involves the validity of a municipal ordinance, persons interested in the subject matter of the declaratory judgment shall include such municipality, and if the proceeding involves the validity of a state statute, such persons shall include the attorney general.

The party seeking the declaratory judgment shall append to its complaint or counterclaim a certificate stating that all such interested persons have been joined as parties to the action or have been given reasonable notice thereof. If notice was given, the certificate shall list the names, if known, of all such persons, the nature of their interest and the manner of notice.

(c) Except as provided in Sections 10-39 and 10-44, no declaratory judgment action shall be defeated by the nonjoinder of parties or the failure to give notice to interested persons. The exclusive remedy for nonjoinder or failure to give notice to interested persons is by motion to strike as provided in Sections 10-39 and 10-44.

(d) Except as otherwise provided by law, no declaration shall be binding against any persons not joined as parties. If it appears to the court that the rights of nonparties will be prejudiced by its declaration, it shall order entry of judgment in such form as to affect only the parties to the action.

(P.B. 1978-1997, Sec. 391.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 17-57. —Costs in Declaratory Judgment

Costs shall be discretionary and may be granted to or against any party to the action.

(P.B. 1978-1997, Sec. 392.)

Sec. 17-58. —Declaratory Judgment Appealable

The decision of the judicial authority shall be final between the parties to the action as to the question or issue determined, and shall be subject to review by appeal as in other causes.

(P.B. 1978-1997, Sec. 393.)

Sec. 17-59. —Order of Priorities in Declaratory Judgment

In any action in which order of priorities could be determined under scire facias proceedings, such order of priorities may be determined by declaratory judgment proceedings. (See General Statutes § 52-235a.)

(P.B. 1978-1997, Sec. 394.)

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CHAPTER 18

FEES AND COSTS

Sec.	
18-1.	Vouchers for Court Expenses
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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 18-1. Vouchers for Court Expenses

No costs shall be taxed for court expenses unless each item of payment of over fifty dollars shall be accompanied by a proper voucher. No part of the clerk's bill or fees shall be included for taxation in the state marshal's bill, or in any bill of a community correctional center.

(P.B. 1978-1997, Sec. 407.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 18-2. Costs on Appeal from Commissioners

If an executor, administrator or trustee upon an estate shall appeal from the report of the commissioners in allowing a claim to a creditor and such claim is disallowed upon the appeal, or if a creditor shall appeal from the disallowance of claim in whole or in part and shall recover no more than was allowed by the commissioners, judgment for costs shall be rendered against the creditor. If upon an appeal by an executor, administrator or trustee the creditor shall recover as large a sum as, or a larger sum than, was allowed to the creditor by the commissioners, or if upon the creditor's own appeal from the disallowance of claim in whole or in part, a creditor shall recover a greater sum than was allowed by the commissioners, costs will be taxed in the creditor's favor against the estate. In any other case, costs shall be discretionary with the judicial authority.

(P.B. 1978-1997, Sec. 409.)

Sec. 18-3. Costs on Creditor's Appeal

If any creditor of such an estate shall appeal from the doings or report of the commissioners in allowing the claim of any other creditor, costs, at the discretion of the judicial authority, may be taxed in favor of the prevailing party against the other. No costs shall be allowed against the estate.

(P.B. 1978-1997, Sec. 410.)

Sec. 18-4. Eminent Domain; Clerk's Fees

If, by the provisions of the charter of any railroad company, canal company, bridge company, or the like, it shall be made the duty of the judicial authority to appoint appraisers, assessors, commissioners, etc., the clerk's fees must be paid as in other causes.

(P.B. 1978-1997, Sec. 411.)

Sec. 18-5. Taxation of Costs; Appeal

(a) Except as otherwise provided in this section, costs may be taxed by the clerk in civil cases fourteen days after the filing of a written bill of costs provided that no objection is filed. If a written objection is filed within the fourteen day period, notice shall be given by the clerk to all appearing parties of record of the date and time of the clerk's taxation. The parties may appear at such taxation and have the right to be heard by the clerk.

(b) Either party may move the judicial authority for a review of the taxation by the clerk by filing a motion for review of taxation of costs within twenty days of the issuance of the notice of taxation by the clerk.

(c) Notwithstanding the provisions of subsection (a), the costs paid as an application fee for any execution on a money judgment shall be taxed by the clerk upon the issuance of the execution.

(P.B. 1978-1997, Sec. 412.) (Amended June 20, 2005, to take effect Jan. 1, 2006.)

Sec. 18-6. Costs on Writ of Error

No copy of a record upon which a writ of error shall be pending shall be taxed in the bill of costs

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on such writ, unless such copy shall become necessary by reason of a defense of nul tiel record.
(P.B. 1978-1997, Sec. 413.)

Sec. 18-7. Costs on Interlocutory Proceedings

Costs taxed on any interlocutory proceedings must be paid before any further pleading may be filed or other step taken in the cause by the party against whom they were awarded, unless the judicial authority specially directs otherwise or the written consent of the adverse party is given.
(P.B. 1978-1997, Sec. 414.)

Sec. 18-8. Jury Fee where More than One Trial

If more than one trial to the jury of a case is had, no more than one jury fee shall be required to be paid.
(P.B. 1978-1997, Sec. 415.)

Sec. 18-9. Nonresident Witnesses; Fees

The mileage or travel of witnesses residing out of the state will be computed and taxed from the state line, on the usual course of travel.
(P.B. 1978-1997, Sec. 416.)

Sec. 18-10. Witness Fees in Several Suits

If a witness be in attendance in more cases than one, between the same parties, at the same time, and on behalf of the same party, the fees of the witness for travel and attendance will be taxed for one case only.
(P.B. 1978-1997, Sec. 417.)

Sec. 18-11. Witness Not Called; Fees

If witnesses, having been duly summoned, attend as witnesses, but are not called to testify, their fees shall be taxed in the bill of costs, if it appears to the judicial authority that they were summoned in good faith and with the expectation of using them, and if their testimony would have been admissible.
(P.B. 1978-1997, Sec. 418.)

Sec. 18-12. Costs where Several Issues

(a) Whenever in any action there shall be two or more issues joined on material allegations, and a part of such issues shall be found for the defendant and the remainder for the plaintiff, the defendant shall recover such costs as were incurred upon the issues found in defendant's favor, including fees of witnesses and the expense of summoning them. If several distinct claims shall be made under one count, and the plaintiff shall recover upon some and not upon others, plaintiff shall not recover costs incurred in attempting to support the claims which plaintiff shall fail to establish.

(b) When costs are awarded to both parties, the judicial authority upon motion of either party may order a setoff of the same, and execution will then issue only for the balance.
(P.B. 1978-1997, Sec. 419.)

Sec. 18-13. Several Defendants; Costs

In all cases where there are several defendants, the judicial authority may make such order as it may deem just to prevent any defendant from being embarrassed or put to expense by being required to attend upon any proceedings in the action in which such defendant may have no interest; and no costs shall be taxed against any defendant with which that defendant is not justly chargeable.
(P.B. 1978-1997, Sec. 420.)

Sec. 18-14. Fees and Costs where Plaintiffs Join or Actions Are Consolidated

(a) Where plaintiffs join under Section 9-4, or actions are consolidated, and the case is claimed for the jury, there shall be but one jury fee, except that if separate jury trials are ordered, a jury fee shall be paid for each such trial.

(b) Each party who prevails shall be entitled to recover from the losing party or parties indemnity, trial and witness fees to the same extent as though the plaintiffs who have several rights had brought separate actions.
(P.B. 1978-1997, Sec. 421.)

Sec. 18-15. Costs where Both Legal and Equitable Issues

Where legal and equitable matters or claims for relief arising out of the same transaction or transactions connected with the same subject of action are joined in the same complaint, or where any pleading setting forth a matter which, before January 1, 1980, would have been cognizable only at law is met by setting up some equitable matter, either by itself or in connection with a legal defense, the costs upon the whole case shall be at the discretion of the judicial authority; but where legal and equitable causes of action which are wholly unconnected with each other are joined in the same complaint, the costs upon the judgment on the equitable causes of action only shall be discretionary.
(P.B. 1978-1997, Sec. 422.)

Sec. 18-16. Costs on Complaint and Counterclaim

When judgment shall be for the defendant on the complaint and for the plaintiff on a counterclaim, costs shall be taxed for the defendant as

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the prevailing party under General Statutes § 52-257, unless the judicial authority shall direct otherwise.

(P.B. 1978-1997, Sec. 423.)

Sec. 18-17. Costs on Counterclaim

No costs shall be taxed in favor of a defendant recovering judgment on a counterclaim or setoff, which were incurred before the same was filed.

(P.B. 1978-1997, Sec. 424.)

Sec. 18-18. Costs for Exhibits

The sum to be taxed to the prevailing party under General Statutes § 52-257, for maps, plans, mechanical drawings, and photographs shall be determined by the judicial authority.

(P.B. 1978-1997, Sec. 425.)

Sec. 18-19. Proceedings before Judge; No Costs

In proceedings before a judge no costs shall be taxed in favor of either party unless otherwise provided by statute.

(P.B. 1978-1997, Sec. 427.)

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CHAPTER 19

REFERENCES

Sec.		Sec.	
19-1.	Application of Chapter	19-10.	Alternative Report
19-2.	Reference to Committee	19-11.	Amending Report
19-2A.	Reference to Attorney Trial Referee	19-12.	Motion to Correct [Repealed]
19-3.	Reference to Judge Trial Referee	19-13.	Exceptions to Report or Finding [Repealed]
19-4.	Attorney Trial Referees; Time to File Report	19-14.	Objections to Acceptance of Report
19-5.	Appointment of Committee or Referee	19-15.	Time to File Objections
19-6.	Effect of Reference	19-16.	Judgment on the Report
19-7.	Pleadings	19-17.	Function of the Court
19-8.	Report	19-18.	Extensions of Time
19-9.	Request for Finding	19-19.	Reference to Accountant

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 19-1. Application of Chapter

The provisions of this chapter shall govern the procedure in matters, except dissolution of marriage or civil union, legal separation, annulment, and juvenile matters, referred to committees, state referees and senior judges, attorney trial referees, and, so far as applicable, to auditors, appraisers or other persons designated to make reports to the court.

(P.B. 1978-1997, Sec. 428.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the phrase ''or civil union'' was inserted after the phrase ''dissolution of marriage.''

COMMENTARY—2007: The above change is made in light of Public Act 05-10, an act that authorizes same sex civil unions.

Sec. 19-2. Reference to Committee

The court or any judge thereof may send to a committee for a finding of facts any case wherein the parties are not, as a matter of right, entitled to a trial by jury. A committee shall not be appointed without the consent of all parties appearing, unless the court, after a hearing upon motion for appointment of a committee, is of the opinion that the questions involved are such as clearly ought to be sent to a committee.

(P.B. 1978-1997, Sec. 429.)

Sec. 19-2A. Reference to Attorney Trial Referee

The court or judicial authority may refer to an attorney trial referee any civil nonjury case in which the issues have been closed, provided that the appearing parties or their counsel consent to the referral.

(Adopted June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-3. Reference to Judge Trial Referee

(Amended June 28, 1999, to take effect Jan. 1, 2000.)

The clerk shall give notice to each referee of a reference and note in the court file the date of the issuance of the notice. In addition to matters required to be referred to a judge trial referee, the judicial authority may refer any civil nonjury case or, with the written consent of the parties or their attorneys, any civil jury case, pending before such court, in which the issues have been closed, to a judge trial referee, who shall have and exercise the powers of the superior court in respect to trial, judgment and appeal in such case, and any proceeding resulting from a demand for a trial de novo pursuant to subsection (e) of General Statutes § 52-549z, may be referred without the consent of the parties to a judge trial referee who has been specifically designated to hear such proceedings pursuant to subsection (b) of General Statutes § 52-434. Any case referred to a judge trial referee shall be deemed to have been referred for all further proceedings and judgment, including matters pertaining to any appeal therefrom, unless otherwise ordered before or after the reference. The court may also refer to a judge trial referee any motion for summary judgment and any other pretrial matter in any civil nonjury or civil jury case.

(P.B. 1978-1997, Sec. 430.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 19-4. Attorney Trial Referees; Time to File Report

An attorney trial referee to whom a case has been referred shall file a report with the clerk of the court, with sufficient copies for all counsel, within one hundred and twenty days of the completion of the trial before such referee.

(P.B. 1978-1997, Sec. 430A.)

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Sec. 19-5. Appointment of Committee or Referee

It is the function of the court or judge to determine and appoint the person or persons who shall constitute a committee, or the referee to whom a case shall be referred. Recommendations by counsel shall be made only at the request of the court or judge. If more than one person shall constitute the committee, the first person named by the court shall be the chair of the committee.

(P.B. 1978-1997, Sec. 431.)

Sec. 19-6. Effect of Reference

(a) When any case shall be referred, no trial will be had by the court unless the reference be revoked upon stipulation of the parties or order of the court. Any reference shall continue in force until the duties thereunder have been performed or the order revoked.

(b) In making a reference in any eminent domain proceeding, the court shall fix a date not more than sixty days thereafter, unless for good cause shown a longer period is required, on which the parties shall exchange copies of their appraisal reports. Such reports shall set forth the valuation placed upon the property in issue and the details of the items of, or the basis for, such valuation. The court may, in its discretion and under such conditions as it deems proper, and after notice and hearing, grant a further extension of time, beyond that originally fixed, to any party confronted with unusual and special circumstances requiring additional time for the exchange of appraisal reports.

(P.B. 1978-1997, Sec. 432.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-7. Pleadings

No case shall be referred to a committee or attorney trial referee until the issues are closed and a certification to that effect has been filed pursuant to Section 14-8. Thereafter no pleadings may be filed except by agreement of all parties or order of the court or the attorney trial referee. Such pleadings shall be filed with the clerk and a copy filed with the committee or the attorney trial referee.

(P.B. 1978-1997, Sec. 433.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-8. Report

(a) The report of a committee or attorney trial referee shall state, in separate and consecutively numbered paragraphs, the facts found and the conclusions drawn therefrom. It should not contain statements of evidence or excerpts from the evidence. The report should ordinarily state only the ultimate facts found; but if the committee or attorney trial referee has reason to believe that the conclusions as to such facts from subordinate facts will be questioned, it may also state the subordinate facts found proven; and any committee or attorney trial referee having reason to believe that the rulings will be questioned may state them with a brief summary of such facts as are necessary to explain them; and the committee or attorney trial referee should state such claims as were made by the parties and which either party requests be stated.

(b) The committee or attorney trial referee may accompany the report with a memorandum of decision including such matters as it may deem helpful in the decision of the case, and, in any case in which appraisal fees may be awarded by the court, shall make a finding and recommendation as to such appraisal fees as it deems reasonable.

(P.B. 1978-1997, Sec. 434.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-9. Request for Finding

Either party may request a committee or attorney trial referee to make a finding of subordinate facts or of its rulings, and of the claims made, and shall include in or annex to such request a statement of the facts, or rulings, or claims, the party desires the committee or attorney trial referee to incorporate in the report.

(P.B. 1978-1997, Sec. 435.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-10. Alternative Report

If alternative claims are made before the committee or attorney trial referee, or the committee or attorney trial referee deems it advisable, it may report all the facts bearing upon such claims and make its conclusions in the alternative, so that the judgment rendered will depend upon which of the alternative conclusions the facts are found legally to support.

(P.B. 1978-1997, Sec. 436.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-11. Amending Report

A committee or attorney trial referee may, at any time before a report is accepted, file an amendment to it or an amended report.

(P.B. 1978-1997, Sec. 437.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-12. Motion to Correct

[Repealed as of Jan. 1, 2000.]

Sec. 19-13. Exceptions to Report or Finding

[Repealed as of Jan. 1, 2000.]

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Sec. 19-14. Objections to Acceptance of Report

A party may file objections to the acceptance of a report on the ground that conclusions of fact stated in it were not properly reached on the basis of the subordinate facts found, or that the committee or attorney trial referee erred in rulings on evidence or other rulings or that there are other reasons why the report should not be accepted. A party objecting on these grounds must file with the party's objections a transcript of the evidence taken before the committee, except such portions as the parties may stipulate to omit.

(P.B. 1978-1997, Sec. 440.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 19-15. Time to File Objections

Objections to the acceptance of a report shall be filed within twenty-one days after the mailing of the report to the parties or their counsel by the clerk.

(P.B. 1978-1997, Sec. 441.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-16. Judgment on the Report

After the expiration of twenty-one days from the mailing of the report, either party may, without written motion, claim the case for the short calendar for judgment on the report of the committee or attorney trial referee, provided, if the parties file a stipulation that no objections will be filed, the case may be so claimed at any time thereafter.

The court may, on its own motion and with notice thereof, schedule the matter for judgment on the report and/or hearing on any objections thereto, anytime after the expiration of twenty-one days from the mailing of the report to the parties or their counsel by the clerk.

(P.B. 1978-1997, Sec. 442.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-17. Function of the Court

(a) The court shall render such judgment as the law requires upon the facts in the report. If the court finds that the committee or attorney trial referee has materially erred in its rulings or that there are other sufficient reasons why the report should not be accepted, the court shall reject the report and refer the matter to the same or another committee or attorney trial referee, as the case may be, for a new trial or revoke the reference and leave the case to be disposed of in court.

(b) The court may correct a report at any time before judgment upon the written stipulation of the parties or it may upon its own motion add a fact which is admitted or undisputed or strike out a fact improperly found.

(P.B. 1978-1997, Sec. 443.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-18. Extensions of Time

Any judge of the court in which the report is filed may for good cause shown allow extensions of time for taking any of the steps herein provided.

(P.B. 1978-1997, Sec. 444.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 19-19. Reference to Accountant

The court or any judge thereof may refer any pending matter to an accountant for an examination of any account or books. The accountant shall have authority to make such examination and shall file a report with comments with the court or judge. The fees and expenses of the accountant, as fixed and allowed by the court or judge, shall be paid by the estate or the parties, as the court or judge may determine. The other provisions of this chapter shall not be applicable to reports by accountants under this section.

(P.B. 1978-1997, Sec. 445.)

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CHAPTER 20

HEARINGS IN CHAMBERS

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20-1. Procedure in Contested Matters
20-2. Certifying Proceedings to Court
20-3. Transfer of Hearings before Judges
20-4. Trial before Judge; Lodging File and Papers
20-5. Lodging Papers in Cause Affecting Land
20-6. Clerk Designated by Judge to Take Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 20-1. Procedure in Contested Matters

Where any matter in a proceeding which has or might have been made returnable to the court in any judicial district is brought, pursuant to statute before a judge, and is contested, and it may become necessary to take oral testimony, the judge may, at his or her discretion and by agreement of the parties, repair to the courthouse, open a special session of the court, certify such proceedings to said court, and go forward with the hearing as a court.

(P.B. 1978-1997, Sec. 446.)

Sec. 20-2. Certifying Proceedings to Court

Each application or petition made to any judge in connection with any cause then pending in or returnable to any court and the proceedings thereon shall be certified to the said court by said judge. (See General Statutes § 52-504.)

(P.B. 1978-1997, Sec. 447.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 20-3. Transfer of Hearings before Judges

When, upon any application, petition or matter presented to any judge of the court for a hearing by him or her as a judge, notice to the adverse party of the hearing thereon is required, either by statute or in the discretion of the judge, the judge to whom such application, petition or matter has been presented may, in the order of notice issued by the judge, designate any other judge of the court to hear the same, the consent thereto of such other judge having first been obtained, and when any application, petition or matter is pending before any judge of the court, such application, petition or matter may be by the judge transferred to any other judge of the court, upon like consent first obtained; and in either case such other judge shall thereupon proceed with such application, petition or matter with the same authority as though the same had originally been presented to such judge or had theretofore been pending before him or her. (See General Statutes § 51-189.)

(P.B. 1978-1997, Sec. 448.)

Sec. 20-4. Trial before Judge; Lodging File and Papers

In all trials of causes before a judge that might have been brought to the court, the judge, when a decision has been reached, shall lodge the file and papers in such cause, and a memorandum of the judge's decision, with the clerk of the court who would have been the custodian thereof had the cause been tried by the court in such judicial district, and such clerk shall thereupon become their lawful custodian. (See General Statutes § 51-190a.)

(P.B. 1978-1997, Sec. 449.)

Sec. 20-5. Lodging Papers in Cause Affecting Land

In all causes relating to an interest in land, tried by a judge, the judge shall lodge the file and papers in the cause, with a memorandum of the judge's decision, with a clerk of the court in the judicial district in which the land affected is located, who shall thereupon become their lawful custodian.

(P.B. 1978-1997, Sec. 450.)

Sec. 20-6. Clerk Designated by Judge to Take Papers

When a cause other than one mentioned in Sections 20-4 and 20-5 is tried by a judge, and it is not otherwise provided by law where the file and papers shall be lodged, the judge, when a decision has been reached, shall designate a clerk of the superior court with whom the same shall be lodged, and shall thereupon lodge the same with such clerk with a memorandum of the judge's decision, and such clerk shall thereupon become the lawful custodian thereof.

(P.B. 1978-1997, Sec. 451.)

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CHAPTER 21

RECEIVERS

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21-4.	Receiver to Give Bond
21-5.	Inventory
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21-11.	Continuance of Business
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21-20.	—Appointment
21-21.	—Bond
21-22.	—Discharge
21-23.	—Orders
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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 21-1. Appointment of Temporary Receiver in Chambers

All applications for the appointment of a receiver shall be made in a civil action, and at any time after the writ and complaint has been signed. As ancillary thereto, an application may be made, when the court before which such action is pending is not in actual session, to a judge in chambers for the appointment of a temporary receiver, after notice to the parties in interest, unless the exigencies of the case require otherwise; and said judge may appoint a temporary receiver, and upon such appointment shall fix a time for a hearing upon the confirmation of such temporary receiver and the appointment of appraisers, and cause not less than six days' notice thereof to be given to all parties in interest by mail and otherwise if deemed necessary. Upon such hearing or an adjournment thereof, the judge may appoint two or more appraisers and either confirm the temporary receiver or make a new appointment of a temporary receiver. The appointment of a temporary receiver shall continue until a permanent receiver shall be appointed or until the further order of the court.

(P.B. 1978-1997, Sec. 485.)

Sec. 21-2. Permanent Receiver

The temporary receiver shall cause the case to be duly assigned for trial in the court at the earliest practicable day after the return day of the action, for the appointment of a permanent receiver, and in cases where the day for such hearing has not been fixed before the opening of the session of the court to which said proceeding is returnable, the temporary receiver, on or before such opening, shall make and place upon the short calendar list an application therefor.

(P.B. 1978-1997, Sec. 486.)

Sec. 21-3. Appointments by Court

(a) All appointments of receivers shall be temporary appointments, unless made by the court after the return day of the action, and upon full notice and opportunity to be heard to all concerned. If made after the return day the appointment shall be upon written motion addressed to the court. If made before the return day the party desiring the appointment shall file a written application as is required where the appointment is by a judge in chambers.

(b) In either case the court making a temporary appointment shall forthwith make an order for a hearing upon the confirmation of such temporary appointment and the appointment of two or more appraisers, and direct the temporary receiver to give notice of such hearing and of the time and place thereof to all parties concerned by public advertisement if it seems advisable and by causing a written or printed notice thereof to be mailed, postpaid, to all known creditors and to all stockholders of record of the corporation, if the defendant be a corporation, at least six days before such hearing.

(c) At said hearing, if after the return day, the court may appoint a permanent receiver, who may be either the temporary receiver or a new appointee. If said hearing is before the return day, then such appointment shall be temporary only, and such temporary receiver shall cause the matter of his or her confirmation as permanent receiver

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or the appointment of some other person as permanent receiver to be brought before the court as provided in the case of temporary receivers appointed by a judge in chambers.
(P.B. 1978-1997, Sec. 487.)

Sec. 21-4. Receiver to Give Bond

Every receiver, temporary or permanent, before assuming to act as such, shall file with the clerk of the court by which, or by a judge of which, he or she was appointed, a bond with such surety or sureties, and for such an amount as such court or judge may order and approve, payable to the state and conditioned for the faithful performance of the receiver's official duties. (See General Statutes § 52-506 and annotations.)
(P.B. 1978-1997, Sec. 488.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 21-5. Inventory

Every receiver, upon confirmation or permanent appointment, shall forthwith, and without any order therefor, prepare and file a sworn inventory of the assets of the estate, which shall contain an appraisal of each item therein, made by the appraisers appointed for such purpose. Every temporary receiver, upon original appointment, shall make an inventory, unless otherwise ordered.
(P.B. 1978-1997, Sec. 489.)

Sec. 21-6. Insolvent Estates to Be Liquidated

At the time of the appointment or of the confirmation of a temporary receiver or the appointment of a permanent receiver, such inquiry as is practicable shall be made by the judge or court relative to the solvency of the estate. When, upon such inquiry or thereafter, it appears to the judge or court that the estate is insolvent, the estate shall be promptly liquidated and no further continuance of the business, except for the purpose of liquidation, shall be permitted, unless, because of exceptional circumstances, it shall be otherwise ordered.
(P.B. 1978-1997, Sec. 490.)

Sec. 21-7. Presentation and Allowance of Claims; Presentation

The court shall, in the judgment appointing a permanent receiver, limit a time for the presentation of claims against the estate and direct that the receiver forthwith give notice thereof, and that all claims not exhibited within said time will be barred, to all known creditors, by mailing a written or printed copy of such order. The court may provide for further notice if it deems the same advisable.
(P.B. 1978-1997, Sec. 492.)

Sec. 21-8. —Allowance; Hearing

(a) The receiver shall, within two weeks after the order of notice, make a return of compliance with it, and within a like time after the expiration of the limitation file a list of claims presented, separately stating those in which a preference is claimed, and make application for an order of the court thereon.

(b) The court shall thereupon by its order allow or disallow, in whole or in part, the claims so returned and any preferences claimed and order the receiver forthwith to give written notice to each claimant whose claim has been disallowed in whole or in part that unless the claimant shall within two weeks from the giving of such notice by the receiver bring an application to the court for the allowance of the claim, the same shall be barred; and any such application shall be speedily heard and the decision thereon shall, subject to appeal, be final. Any creditor may intervene in the proceeding.
(P.B. 1978-1997, Sec. 493.)

Sec. 21-9. —Extensions of Time

The court, for good cause shown, may extend the time for presenting a claim or claims to the receiver, and may extend the time for making application for the allowance of a claim or claims disallowed in whole or in part.
(P.B. 1978-1997, Sec. 494.)

Sec. 21-10. —Hearing before Action on Allowance

The court may, upon due notice to a claimant, hear the claimant's claim before allowing or disallowing the same and, subject to appeal, the decision thereon shall be final.
(P.B. 1978-1997, Sec. 495.)

Sec. 21-11. Continuance of Business

No order for the continuance of a business shall be made for a greater period of time than four months, except for special cause shown. For cause shown, such orders may be renewed from time to time, as the exigencies of the case may require.
(P.B. 1978-1997, Sec. 496.)

Sec. 21-12. Reports where Business Continued

When a receiver is continuing business under the order of a judge or the court, the receiver shall, during the first ten days of each month, file a report showing the results of operating the business during the preceding month. The receiver shall furnish supplemental schedules and information if required by the court.
(P.B. 1978-1997, Sec. 497.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

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Sec. 21-13. Semiannual Summary of Orders

Every receiver shall, on the first Tuesdays of April and October of each year, file a summary statement of all orders made in said cause during the six months preceding, and the doings thereunder. The clerk shall hand the statement to the judge holding the term or session then pending, or held next thereafter, who shall, upon examination of the same, make such further orders in said cause as are deemed necessary, and may direct that the cause be placed on the short calendar for an order approving the statement.

(P.B. 1978-1997, Sec. 498.)

Sec. 21-14. Semiannual Accounts

Every receiver upon an estate which has been in process of settlement more than four months (except receivers of state banks and trust companies) shall during the first week of April and October of each year sign, swear to and file with the court a full and detailed account of the condition and prospects of the estate as of the close of the next preceding month, including therein a statement of realization and liquidation. The receiver shall furnish supplemental schedules and information if required by the court. The receiver shall cause a motion for the approval of the report to be placed on the short calendar.

(P.B. 1978-1997, Sec. 499.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 21-15. Orders in Chambers

Whenever any judge shall have appointed a receiver in chambers, all applications for orders in said proceeding made out of court shall, except in the case of such judge's absence from the state, the judge's disability or a request in writing to the contrary, be made to such judge.

(P.B. 1978-1997, Sec. 500.)

Sec. 21-16. Duty of Clerks

The clerks shall see that these rules are enforced and shall promptly report any violations thereof to the court.

(P.B. 1978-1997, Sec. 501.)

Sec. 21-17. Removal of Receivers

Receivers may be removed at any time, at the pleasure of the court by which they were appointed or, if such court is not in session, by a judge thereof; and, if any receiver is removed or declines to act or dies, the court that appointed the receiver, or, if such court is not in session, a judge thereof, may fill the vacancy. (See General Statutes § 52-513 and annotations.)

(P.B. 1978-1997, Sec. 502.)

Sec. 21-18. Ancillary Receivers

These rules, so far as applicable, shall govern the appointment and duties of ancillary receivers.

(P.B. 1978-1997, Sec. 503.)

Sec. 21-19. Receiver of Rents; Applicability of Previous Sections

Sections 21-1 through 21-15 shall not apply to receivers of rents.

(P.B. 1978-1997, Sec. 505.)

Sec. 21-20. —Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or plaintiff's attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.

(P.B. 1978-1997, Sec. 506.)

Sec. 21-21. —Bond

No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by *(court or judge)* been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of _____ and described as *(describe generally, e.g., No. 93 Maple Street):*

Now, therefore, if said A shall well and truly perform his or her duties under such appointment, then this obligation shall be void, otherwise in full force and effect.

(P.B. 1978-1997, Sec. 507.)

Sec. 21-22. —Discharge

Any party in interest may at any time move for the discharge of the receiver.

(P.B. 1978-1997, Sec. 508.)

Sec. 21-23. —Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances

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require. The judge shall certify any order passed by the judge in chambers to the court in which the action may be pending.

(P.B. 1978-1997, Sec. 509.)

Sec. 21-24. —Reports

Such receivers shall file written reports quarterly and at such other times as may be required.

(P.B. 1978-1997, Sec. 510.)

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CHAPTER 22

UNEMPLOYMENT COMPENSATION

Sec.
22-1. Appeal
22-2. Assignment for Hearing
22-3. Finding
22-4. Correction of Finding; Motion to Correct Finding
22-5. —Evidence to Be Filed by Appellee
22-6. —Motion to Correct by Appellee
22-7. —Duty of Board on Motion to Correct
22-8. —Claiming Error on Board's Decision on Motion to Correct
22-9. Function of the Court

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 22-1. Appeal

(a) A decision of the employment security board of review may be appealed, within the time limited by statute, to the superior court for the judicial district of Hartford or for the judicial district wherein the appellant resides. The appeal shall be in the form of a petition which shall state the grounds on which a review is sought. The appellant shall file the original and five copies of the petition in the office of the employment security board of review. The chair of the board shall, within the third business day after such filing, cause the original petition or petitions to be mailed to the clerk of the superior court and, copy or copies thereof to be mailed to the administrator and to each other party to the proceeding in which the appeal was taken. The clerk shall docket the appeal as returned to the next return day after the receipt of the petition or petitions. No appeal bond shall be required.

(b) At the time the petition is mailed to the clerk, or as soon thereafter as practicable, the chair of the board shall cause to be mailed to the clerk a certified copy of the record, which shall consist of the notice of appeal to the referee and the board, the notices of hearing before them, the referee's findings of fact and decision, the findings and decision of the board, all documents admitted into evidence before the referee and the board or both, and all other evidentiary material accepted by them.

(c) The judicial authority may, on request of a party to the action or on its own motion, order the board to prepare and verify to the court a transcript of the hearing before the referee in cases in which the board's decision was rendered on the record of such hearing, or a transcript of the hearing before the board in cases in which the board's decision was rendered on the record of its own evidentiary hearing.

(P.B. 1978-1997, Sec. 511A.) (Amended June 29, 1998, to take effect Sept. 1, 1998; amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 22-2. Assignment for Hearing

(a) Appeals from decisions of the employment security board of review are privileged with respect to their assignment for trial, but they shall be claimed for the short calendar. The judicial authority, however, may order the appeal placed on the administrative appeal trial list.

(b) In any appeal in which one of the parties is not represented by counsel and in which the party taking the appeal does not claim the case for the short calendar or trial within a reasonable time after the return day, the judicial authority may of its own motion dismiss the appeal, or the party ready to proceed may move for nonsuit or default as appropriate.

(P.B. 1978-1997, Sec. 511B.)

Sec. 22-3. Finding

The finding of the board should contain only the ultimate, relevant and material facts essential to the case in hand and found by it, together with a statement of its conclusions and the claims of law made by the parties. It should not contain excerpts from evidence or merely evidential facts, nor the opinions or beliefs of the board, nor the reasons for its conclusions. The opinions, beliefs, reasons and argument of the board should be expressed in the memorandum of decision, if any be filed, so far as they may be helpful in the decision of the case.

(P.B. 1978-1997, Sec. 514.)

Sec. 22-4. Correction of Finding; Motion to Correct Finding

If the appellant desires to have the finding of the board corrected he or she must, within two weeks after the record has been filed in the superior court, unless the time is extended for cause by the board, file with the board a motion for the correction of the finding and with it such portions of the evidence as he or she deems relevant and material to the corrections asked for, certified by the stenographer who took it; but if the appellant

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claims that substantially all the evidence is relevant and material to the corrections sought, he or she may file all of it, so certified, indicating in the motion so far as possible the portion applicable to each correction sought. The board shall forthwith upon the filing of the motion and of the transcript of the evidence, give notice to the adverse party or parties.

(P.B. 1978-1997, Sec. 515A.)

Sec. 22-5. —Evidence to Be Filed by Appellee

The appellee should, if he or she deems that additional evidence is relevant and material to the motion to correct, within one week after the appellant has filed the transcript of evidence, so notify the board, and, at the earliest time, he or she can procure it file with the board such additional evidence.

(P.B. 1978-1997, Sec. 516.)

Sec. 22-6. —Motion to Correct by Appellee

If the appellee desires to file a motion to correct, the procedure to be followed shall be the same as that set forth in Sections 22-4 and 22-5 above.

(P.B. 1978-1997, Sec. 516A.)

Sec. 22-7. —Duty of Board on Motion to Correct

The board shall file with the court, within a reasonable time, such motions to correct together with its decision thereon. If the motions are denied in whole or in part and such denial is made a ground of appeal to the court, the board shall, within a reasonable time thereafter, file in the court the transcripts of evidence filed by the appellant and the appellee, together with such additional evidence as may have been taken before the board in the form of testimony, or taken by it in other ways, and deemed by it relevant and material to these corrections.

(P.B. 1978-1997, Sec. 518.)

Sec. 22-8. —Claiming Error on Board's Decision on Motion to Correct

(a) Any party to the appeal may file claims of error concerning the board's decision on a motion to correct the finding. Such claims shall be filed with the court within two weeks from the date the board's decision on the motion to correct was mailed to the party making the claim, and shall contain a certification that a copy thereof has been served on the board and on each other party to the appeal in accordance with Sections 10-12 through 10-17.

(b) The appellant shall include his or her claims of error in the appeal petition unless they are filed subsequent to the filing of that petition, in which case they shall be set forth in an amended petition.

(P.B. 1978-1997, Sec. 518A.)

Sec. 22-9. Function of the Court

(a) Such appeals are heard by the court upon the certified copy of the record filed by the board. The court does not retry the facts or hear evidence. It considers no evidence other than that certified to it by the board, and then for the limited purpose of determining whether the finding should be corrected, or whether there was any evidence to support in law the conclusions reached. It cannot review the conclusions of the board when these depend upon the weight of the evidence and the credibility of witnesses. In addition to rendering judgment on the appeal, the court may order the board to remand the case to a referee for any further proceedings deemed necessary by the court. The court may remand the case to the board for proceedings de novo, or for further proceedings on the record, or for such limited purposes as the court may prescribe. The court may retain jurisdiction by ordering a return to the court of the proceedings conducted in accordance with the order of the court, or may order final disposition. A party aggrieved by a final disposition made in compliance with an order of the superior court may, by the filing of an appropriate motion, request the court to review the disposition of the case.

(b) Corrections by the court of the board's finding will only be made upon the refusal to find a material fact which was an admitted or undisputed fact, upon the finding of a fact in language of doubtful meaning so that its real significance may not clearly appear, or upon the finding of a material fact without evidence.

(P.B. 1978-1997, Sec. 519.)

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CHAPTER 23

MISCELLANEOUS REMEDIES AND PROCEDURES

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

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, 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.

(P.B. 1978-1997, Sec. 525.)

Sec. 23-2. Expedited Process Cases

Civil actions which come within the purview of General Statutes § 52-195b (b) (2) may be placed on the expedited process track pursuant to Section 23-3. Expedited process track cases shall follow the procedures set forth in Sections 23-3 through 23-12. Such procedures are subject to any stays ordered by the judicial authority for referral of the case to an alternate dispute resolution program.

(P.B. 1978-1997, Sec. 525A.)

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Sec. 23-3. —Placement on the Expedited Process Track

(a) Each plaintiff may file with the complaint a form consenting to placement of the case on the expedited process track, signed by all parties to the action and their attorneys. At the time of filing such consent form and complaint the plaintiff shall file with each other party the responses to discovery required by Section 23-7 (a) (1).

(b) If the case is not brought as an expedited process track case pursuant to subsection (a) at the time the complaint is filed, the parties may at a later time file forms consenting to expedited process track placement.

(c) The consent to expedited process track placement shall be on a form prescribed by the office of the chief court administrator, or on a form substantially in compliance therewith, and shall be signed by the party and his or her attorney. Such form shall contain a statement that the case is one which may be brought as an expedited process case under General Statutes § 52-195b (b) (2), that the party consents to placement of the case on the expedited process track, and that the party waives the right to a trial by jury, the right to a record of the trial proceedings, and the right to appeal. The form to be filed by each plaintiff shall also contain a statement that the plaintiff agrees to limit the amount in demand to a maximum of $75,000, exclusive of interest and costs. A party filing such form shall serve it on all other parties in accordance with Sections 10-12 through 10-17. The waivers and the limit to the amount in demand shall apply only if the case is placed on the expedited process track.

(d) When all parties to the action have filed a consent to expedited track placement, the plaintiff shall file with the clerk a notice for placement on the expedited process track. Once the notice has been filed, the parties will be limited to the procedures set forth in Sections 23-5 through 23-12, even if discovery, pleadings and other filings not allowed in those sections have previously been filed.

(P.B. 1978-1997, Sec. 525B.)

Sec. 23-4. —Pleadings Allowed in Expedited Process Track Cases

Only the following pleadings may be filed in expedited process track cases: answers, special defenses, replies to special defenses, counterclaims and cross complaints. The time periods set forth in Section 10-8 for the filing of pleadings shall apply to these cases.

(P.B. 1978-1997, Sec. 525C.)

Sec. 23-5. —Motions Allowed

Only the following motions may be filed in expedited process track cases: motions for nonsuit or default for failure to appear or for failure to plead; motions to substitute, add or implead parties; motions to consolidate; motions to withdraw appearance; motions to amend the amount in demand; and motions to transfer the case from the expedited process track to the regular docket. Except as otherwise provided in Sections 17-20 and 17-32 concerning motions for default for failure to appear and for failure to plead, these motions shall be placed on short calendar. Motions to substitute, add, or implead parties and motions to consolidate shall be accompanied by a notice that the case has been placed on the expedited process track.

(P.B. 1978-1997, Sec. 525D.)

Sec. 23-6. —Discovery Allowed

Except with regard to discovery required as a result of the management conference to be held pursuant to Section 23-9, discovery in expedited process cases shall be limited to the interrogatories and requests for production set forth in forms 201, 202, 204 and 205 of the rules of practice. These forms are set forth in the Appendix of Forms in this volume. Depositions may be taken, but only of parties to the action. Requests for admission shall not be allowed; admissions of fact will be considered at the management conference.

(P.B. 1978-1997, Sec. 525E.) (Amended August 24, 2001, to take effect Jan. 1, 2002.)

Sec. 23-7. —Discovery Procedure for Expedited Process Cases

(a) The following time periods for discovery shall apply to expedited process cases.

(1) Except in cases under Section 23-3 (a) in which the plaintiff complied with discovery at the time of filing the complaint, the plaintiff shall serve on each defendant in accordance with Sections 10-12 through 10-17 responses to forms 202 and 205 of the rules of practice within ten days of the date the notice for placement on the expedited process track was filed.

(2) The defendant shall serve on the plaintiff in accordance with Sections 10-12 through 10- 17 responses to forms 201 and 204 of the rules of practice within ten days of the defendant's receipt of the plaintiff's discovery.

(b) Any issues concerning discovery shall be considered by the judicial authority at the management conference; they shall not be placed on the short calendar.

(P.B. 1978-1997, Sec. 525F.) (Amended August 24, 2001, to take effect Jan. 1, 2002.)

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Sec. 23-8. —Certification That Pleadings Are Closed

Once the pleadings are closed, any party to the action may file a certificate of closed pleadings pursuant to Section 14-8. Such claim shall state that the case is on the expedited process track and that it is privileged with respect to assignment for trial.

(P.B. 1978-1997, Sec. 525G.)

Sec. 23-9. —Case Management Conference for Expedited Process Track Cases

(a) A case management conference shall be scheduled after the filing of the notice of placement on the expedited process track or the certificate of closed pleadings, whichever occurs sooner. All parties and their attorneys shall attend the conference which shall be presided over by a judge or a judge trial referee. The following matters shall be considered at this conference:

(1) A discussion of the possibility of settlement.

(2) Issues concerning the discovery exchange.

(3) Simplification of the issues.

(4) Amendments to the pleadings.

(5) Admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial.

(6) Inspection of hospital records and X-ray films.

(7) Exchange of all medical reports, bills and evidences of special damage which have come into the possession of the parties or of counsel since compliance with discovery.

(8) Such other procedures as may aid in the disposition of the case, including the exchange of medical reports, and the like, which come into the possession of counsel subsequent to the management conference.

(b) The judicial authority may make appropriate orders at the management conference, including the imposition of discovery sanctions under Section 13-14, and such orders shall control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice. Failure to abide by any such orders may subject the offending party to a nonsuit or a default.

(c) At the management conference the judicial authority shall, at the request of any party, address any party on the record to ensure that the party voluntarily, knowingly and intelligently waived the rights to a jury trial, to a record of the trial proceedings and to appeal and that the party understands the expedited process procedure.

(P.B. 1978-1997, Sec. 525H.)

Sec. 23-10. —Transfer to Regular Docket

(a) On motion of a party or on the judicial authority's own motion, the judicial authority may order a case transferred from the expedited process track to the regular docket if any of the following apply:

(1) the movant is a substitute, added or impleaded party who became a party to the case after it was placed on the expedited process track and objects to such placement;

(2) after a case was placed on the expedited process track it was consolidated for trial with a case not eligible for that track or in which any of the parties decline to consent to having the matter proceed as an expedited process case; or

(3) the judicial authority determines that good cause exists for the transfer.

(b) The judicial authority shall order a case transferred from the expedited process track to the regular docket upon the filing of an affidavit by the plaintiff or the plaintiff's attorney, with supporting documentation, stating that subsequent to the filing of plaintiff's consent to expedited process track placement the affiant has learned that the damages which may be recovered exceed $75,000, exclusive of interests and costs.

(P.B. 1978-1997, Sec. 525I.)

Sec. 23-11. —Offers of Judgment

The rules concerning offers of judgment shall apply to cases on the expedited process track.

(P.B. 1978-1997, Sec. 525J.)

Sec. 23-12. —Trial of Cases on Expedited Process Track

Cases on the expedited process track shall be tried by a judicial authority without a jury. Witnesses shall be sworn. Medical or other expert witnesses will not be allowed, but reports and records of medical providers may be admitted into evidence. The judicial authority shall not be bound by the technical rules of evidence, but shall make inquiry, through oral testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of these rules.

(P.B. 1978-1997, Sec. 525K.)

Sec. 23-13. Granting of Complex Litigation Status and Assignment

The chief court administrator or the chief administrative judge of the civil division may designate a group of cases that have many parties and common questions of law or fact as complex litigation cases and assign the cases to a single judge for pretrial, trial, or both and, if appropriate, may

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assign the cases to another judge or court officer for settlement or mediation discussions.
(P.B. 1998.)

Sec. 23-14. —Powers of Judge Assigned in Complex Litigation Cases

The judge to whom complex litigation cases have been assigned may stay any or all further proceedings in the cases, may transfer any or all further proceedings in the cases to the judicial district where the judge is sitting, may hear all pretrial motions, and may enter any appropriate order which facilitates the management of the complex litigation cases.
(P.B. 1998.)

Sec. 23-15. —Request for Complex Litigation Status

An attorney or judge may request the chief court administrator to make an assignment pursuant to Section 23-13. The request shall be submitted in writing to the chief court administrator and the chief administrative judge of the civil division. When an attorney makes such a request, the attorney shall serve a copy of the request on other parties pursuant to Sections 10-12 through 10-17. Should the chief court administrator deem it appropriate to do so, the chief court administrator may solicit comments on the request by causing a notice to be published in the Connecticut Law Journal.
(P.B. 1998.)

Sec. 23-16. Foreclosure of Mortgages

At the time the plaintiff files a motion for judgment of foreclosure, the plaintiff shall serve on each appearing defendant, in accordance with Sections 10-12 through 10-17, a copy of the appraisal report of the property being foreclosed. The motion for judgment shall contain a certification that such service was made.
(P.B. 1978-1997, Sec. 526.)

Sec. 23-17. —Listing of Law Days

(a) In any action to foreclose a mortgage or lien, any party seeking a judgment of strict foreclosure shall file, with the motion for judgment, a list indicating the order in which law days should be assigned to the parties to the action. The order of the law days so indicated shall reflect the information contained in the plaintiff's complaint, as that information may have been modified by the pleadings. Objections to the order of law days indicated on said list shall only be considered in the context of a motion for determination of priorities, which motion must be filed prior to the entry of judgment.

(b) Unless otherwise ordered by the judicial authority at the time it renders the judgment of strict foreclosure, the following provisions shall be deemed to be part of every such judgment:

(1) That, upon the payment of all of the sums found by the judicial authority to be due the plaintiff, including all costs as allowed by the judicial authority and taxed by the clerk, by any defendant, after all subsequent parties in interest have been foreclosed, the title to the premises shall vest absolutely in the defendant making such payment, subject to such unpaid encumbrances, if any, as precede the interest of the redeeming defendant.

(2) That the defendants, and all persons claiming possession of the premises through any of the defendants under any conveyance or instrument executed or recorded subsequent to the date of the lis pendens or whose interest shall have been thereafter obtained by descent or otherwise, deliver up possession of the premises to the plaintiff or the defendant redeeming in accordance with this decree, with stay of execution of ejectment in favor of the redeeming defendant until one day after the time herein limited to redeem, and if all parties fail to redeem, then until the day following the last assigned law day.
(P.B. 1978-1997, Sec. 526A.)

Sec. 23-18. —Proof of Debt in Foreclosures

(a) In any action to foreclose a mortgage where no defense as to the amount of the mortgage debt is interposed, such debt may be proved by presenting to the judicial authority the original note and mortgage, together with the affidavit of the plaintiff or other person familiar with the indebtedness, stating what amount, including interest to the date of the hearing, is due, and that there is no setoff or counterclaim thereto.

(b) No less than five days before the hearing on the motion for judgment of foreclosure, the plaintiff shall file with the clerk of the court and serve on each appearing party, in accordance with Sections 10-12 through 10-17, a preliminary statement of the plaintiff's monetary claim.
(P.B. 1978-1997, Sec. 527.)

Sec. 23-19. —Motion for Deficiency Judgment

(a) Whenever a deficiency judgment is claimed in a foreclosure action, the party claiming such judgment shall file with the clerk of the court within the time limited by statute a written motion setting forth the facts relied on as the basis for the judgment, which motion shall be placed on the short calendar for an evidentiary hearing. Such hearing shall be held not less than fifteen days following the filing of the motion, except as the judicial authority may otherwise order. At such hearing

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the judicial authority shall hear the evidence, establish a valuation for the mortgaged property and shall render judgment for the plaintiff for the difference, if any, between such valuation and the plaintiff's claim. The plaintiff in any further action upon the debt, note or obligation, shall recover only the amount of such judgment.

(b) Upon the motion of any party and for good cause shown, the court may refer such motion to a judge trial referee for hearing and judgment.

(c) Not less than fifteen days prior to the hearing on the motion for deficiency judgment, the party claiming the deficiency judgment shall file with the clerk of the court and serve on each appearing party, in accordance with Sections 10-12 through 10-17, a preliminary computation of the debt, the name of any expert on whose opinion the party will rely to prove the value of the property on the date of vesting, and a statement of the party's claims as to the value. If any party intends to offer evidence contradicting the debt or the valuation of the property, such party shall file an objection five days before the hearing on the motion and shall disclose the name of any person who will testify as to the value of the property.

(P.B. 1978-1997, Sec. 528.)

Sec. 23-20. Review of Civil Contempt

No person shall continue to be detained in a correctional facility pursuant to an order of civil contempt for longer than thirty days, unless at the expiration of such thirty days such person is presented to the judicial authority. On each such presentment, the contemnor shall be given an opportunity to purge himself or herself of the contempt by compliance with the order of the judicial authority. If the contemnor does not so act, the judicial authority may direct that the contemnor remain in custody under the terms of the order of the judicial authority then in effect, or may modify the order if the interests of justice so dictate.

(P.B. 1978-1997, Sec. 528A.)

Sec. 23-21. Habeas Corpus

Except as otherwise provided herein, the procedures set forth in Sections 23-22 through 23- 42 shall apply to any petition for a writ of habeas corpus which sets forth a claim of illegal confinement. Such procedures shall not apply to any petition for a writ of habeas corpus brought to determine the custody and visitation of children or brought by or on behalf of a person confined in a hospital for mental illness.

(P.B. 1978-1997, Sec. 529.)

Sec. 23-22. —The Petition

A petition for a writ of habeas corpus shall be under oath and shall state:

(1) the specific facts upon which each specific claim of illegal confinement is based and the relief requested;

(2) any previous petitions for the writ of habeas corpus challenging the same confinement and the dispositions taken thereon; and

(3) whether the legal grounds upon which the petition is based were previously asserted at the criminal trial, on direct appeal or in any previous petition.

(P.B. 1978-1997, Sec. 529A.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 23-23. —Return of Noncomplying Petition

The court may return any petition not in substantial compliance with the requirements of Section 23-22 with a description of how the petition fails to comply with filing requirements and a statement indicating that a corrected petition may be resubmitted.

(P.B. 1978-1997, Sec. 529B.)

Sec. 23-24. —Preliminary Consideration of Judicial Authority

(a) The judicial authority shall promptly review any petition for a writ of habeas corpus to determine whether the writ should issue. The judicial authority shall issue the writ unless it appears that:

(1) the court lacks jurisdiction;

(2) the petition is wholly frivolous on its face; or

(3) the relief sought is not available.

(b) The judicial authority shall notify the petitioner if it declines to issue the writ pursuant to this rule.

(P.B. 1978-1997, Sec. 529C.)

Sec. 23-25. —Waiver of Filing Fees and Costs of Service

The judicial authority may waive the filing fee and costs of service in accordance with Section 8-2.

(P.B. 1978-1997, Sec. 529D.)

Sec. 23-26. —Appointment of Counsel

In petitions arising from criminal matters, extradition proceedings or delinquency matters, if the petitioner has requested counsel, the judicial authority shall refer the matter to the public defender for an investigation of indigence. If, after such investigation, the judicial authority determines that the petitioner is eligible for public defender services, the judicial authority shall appoint counsel in accordance with the provisions of General Statutes § 51-296.

(P.B. 1978-1997, Sec. 529E.)

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Sec. 23-27. —Venue for Habeas Corpus

The venue for habeas corpus matters shall be in accordance with the general statutes. Transfer or removal of the subject of the petition to another location shall not affect venue, provided that the subject of the petition remains in the custody of the respondent.

(P.B. 1978-1997, Sec. 529F.)

Sec. 23-28. —Transfer of Habeas Corpus

The petition may be transferred to another judicial district for good cause shown.

(P.B. 1978-1997, Sec. 529G.)

Sec. 23-29. —Dismissal

The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that:

(1) the court lacks jurisdiction;

(2) the petition, or a count thereof, fails to state a claim upon which habeas corpus relief can be granted;

(3) the petition presents the same ground as a prior petition previously denied and fails to state new facts or proffer new evidence not reasonably available at the time of the prior petition;

(4) the claims asserted in the petition are moot or premature;

(5) any other legally sufficient ground for dismissal of the petition exists.

(P.B. 1978-1997, Sec. 529H.)

Sec. 23-30. —The Return

(a) The respondent shall file a return to the petition setting forth the facts claimed to justify the detention and attaching any commitment order upon which custody is based.

(b) The return shall respond to the allegations of the petition and shall allege any facts in support of any claim of procedural default, abuse of the writ, or any other claim that the petitioner is not entitled to relief.

(P.B. 1978-1997, Sec. 529I.)

Sec. 23-31. —Reply to the Return

(a) If the return alleges any defense or claim that the petitioner is not entitled to relief, and such allegations are not put in dispute by the petition, the petitioner shall file a reply.

(b) The reply shall admit or deny any allegations that the petitioner is not entitled to relief.

(c) The reply shall allege any facts and assert any cause and prejudice claimed to permit review of any issue despite any claimed procedural default. The reply shall not restate the claims of the petition.

(P.B. 1978-1997, Sec. 529J.)

Sec. 23-32. —Amendments

The petitioner may amend the petition at any time prior to the filing of the return. Following the return, any pleading may be amended with leave of the judicial authority for good cause shown.

(P.B. 1978-1997, Sec. 529K.)

Sec. 23-33. —Request for a More Specific Statement

Any party may request a more specific statement regarding a preceding pleading to obtain a more complete and particular statement of the facts supporting each legal claim or to obtain any other appropriate correction in the preceding pleading. Such request shall be deemed to have been granted by the judicial authority on the date of the filing and shall be complied with by the party to whom it is directed within thirty days of filing, unless within thirty days of filing the party to whom it is directed objects, setting forth, in concise fashion, the basis for the objection. A request for a more specific statement, and objection, may be ruled upon by the judicial authority without oral argument, unless the judicial authority determines that oral argument is necessary.

(P.B. 1978-1997, Sec. 529L.)

Sec. 23-34. —Summary Procedures for Habeas Corpus Petitions

The judicial authority may establish such additional procedures as it determines will aid in the fair and summary disposition of habeas corpus petitions, including, but not limited to, scheduling orders.

(P.B. 1978-1997, Sec. 529M.)

Sec. 23-35. —Schedule for Filing Pleadings

Unless the judicial authority issues specific scheduling orders, the following schedule shall apply:

(a) Amended Petition.

(1) Transcript Necessary. If a transcript of prior proceedings is necessary to pursue the petition, within thirty days after notice that the writ has issued, or notice of appointment of counsel, whichever is later, the petitioner shall file a statement describing any transcript(s) ordered. Upon receipt of the transcript(s), the petitioner shall file a notice of transcript receipt. Within sixty days of receipt of the transcript(s), the petitioner shall file an amended petition, or notice that the petition will not be amended.

(2) Transcript not Necessary. If a transcript is not necessary to pursue the petition, within thirty days after notice that the writ has issued, or notice of appointment of counsel, whichever is later, the petitioner shall file an amended petition or a notice that the petition will not be amended.

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(b) Return or Responsive Pleading. The return or responsive pleading shall be filed within thirty days of the filing of the amended petition or the notice that the petition will not be amended.

(c) Reply. Any reply to the return shall be filed within thirty days after the filing of the return.

(d) The judicial authority may alter the time for filing any pleading.

(P.B. 1978-1997, Sec. 529N.)

Sec. 23-36. —The Expanded Record

A party may file with the court any portion of the transcript and any portion of the superior court, appellate court or supreme court record or clerk's file as part of the record before the habeas court.

(P.B. 1978-1997, Sec. 529O.)

Sec. 23-37. —Summary Judgment in Habeas Corpus

At any time after the pleadings are closed, any party may move for summary judgment, which shall be rendered if the pleadings, affidavits and any other evidence submitted show that there is no genuine issue of material fact between the parties requiring a trial and the moving party is entitled to judgment as a matter of law.

(P.B. 1978-1997, Sec. 529P.)

Sec. 23-38. —Discovery in Habeas Corpus

(a) Discovery, as of right, is limited to:

(1) A list of witnesses;

(2) A statement of the subject matter upon which any expert witness is expected to testify;

(3) A statement of the opinions the expert is expected to render and the ground for each opinion.

(b) The parties may cooperatively engage in informal discovery. The provisions of chapter 13, Discovery and Depositions of the rules of practice, do not apply to habeas corpus proceedings.

(c) Upon motion, the judicial authority may order such other limited discovery as the judicial authority determines will enhance the fair and summary disposal of the case.

(P.B. 1978-1997, Sec. 529Q.)

Sec. 23-39. —Depositions in Habeas Corpus

(a) Upon leave of the judicial authority, the testimony of any person may be taken by deposition if the testimony will be required at an evidentiary hearing and it appears:

(1) the testimony may not be available at the required evidentiary hearing because of physical or mental illness or infirmity of the witness; or

(2) the witness resides out of this state and cannot be compelled to attend and give testimony; or

(3) the witness may otherwise be unavailable to testify at the required evidentiary hearing.

(b) The admissibility of deposition testimony shall be governed by the rules of evidence.

(P.B. 1978-1997, Sec. 529R.)

Sec. 23-40. —Court Appearance in Habeas Corpus

(a) The petitioner and, if they are not the same, the subject of the petition, shall have the right to be present at any evidentiary hearing and at any hearing or oral argument on a question of law which may be dispositive of the case, unless the petitioner, or the subject of the petition, as the case may be, waives such right or is excused by the judicial authority for good cause shown. If the petitioner is represented by counsel, the judicial authority may, but is not required to, permit the petitioner to be present at any other proceeding.

(b) Notwithstanding any other provision of these rules, in a petition arising from a claim regarding conditions of confinement the physical appearance in court of the petitioner or the subject of the petition may, in the discretion of the judicial authority, be made by means of an interactive audiovisual device. Such audiovisual device must operate so that the petitioner, or the subject of the petition, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the petitioner and his or her attorney can confer in private must be provided.

(P.B. 1978-1997, Sec. 529S.) (Amended June 28, 1999, to take effect Jan. 1, 2000.)

Sec. 23-41. —Motion for Leave to Withdraw Appearance of Appointed Counsel

(a) When counsel has been appointed pursuant to Section 23-26, and counsel, after conscientious investigation and examination of the case, concludes that the case is wholly frivolous, counsel shall so advise the judicial authority by filing a motion for leave to withdraw from the case.

(b) Any motion for leave to withdraw shall be filed under seal and provided to the petitioner. Counsel shall serve opposing counsel with notice that a motion for leave to withdraw has been filed, but shall not serve opposing counsel with a copy of the motion or any memorandum of law. The petitioner shall have thirty days from the date the motion is filed to respond in writing.

(c) The judicial authority may order counsel for the petitioner to file a memorandum outlining:

(1) the claims raised by the petitioner or any other potential claims apparent in the case;

(2) the efforts undertaken to investigate the factual basis and legal merit of the claim;

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(3) the factual and legal basis for the conclusion that the case is wholly frivolous.

(P.B. 1978-1997, Sec. 529T.)

Sec. 23-42. —Judicial Action on Motion for Permission to Withdraw Appearance

(a) If the judicial authority finds that the case is wholly without merit, it shall allow counsel to withdraw and shall consider whether the petition shall be dismissed or allowed to proceed, with the petitioner pro se. If the petition is not dismissed, the judge ruling on the motion to withdraw as counsel shall not preside at any subsequent hearing on the merits of the case.

(b) If the judicial authority concludes that the petition is not wholly without merit, it shall not allow counsel to withdraw and may direct counsel to proceed.

(P.B. 1978-1997, Sec. 529U.)

Sec. 23-43. Interpleader; Pleadings

The complaint in an interpleader action shall allege only such facts as show that there are adverse claims to the fund or property.

(P.B. 1978-1997, Sec. 538.)

Sec. 23-44. —Procedure in Interpleader

No trial on the merits of an interpleader action shall be had until (1) an interlocutory judgment of interpleader shall have been entered; and (2) all defendants shall have filed statements of claim, been defaulted or filed waivers. Issues shall be closed on the claims as in other cases.

(P.B. 1978-1997, Sec. 539.) (Amended June 25, 2001, to take effect Jan. 1, 2002.)

Sec. 23-45. Mandamus; Parties Plaintiff

An action of mandamus may be brought in an individual right by any person who claims entitlement to that remedy to enforce a private duty owed to that person, or by any state's attorney in a capacity as such to enforce a public duty.

(P.B. 1978-1997, Sec. 541.)

Sec. 23-46. —Mandamus Complaint

The writ and complaint in an original action shall be in the form used in, and served as are, ordinary civil actions, but with a distinct statement in the prayer for relief that an order in the nature of a mandamus is sought. No affidavit to the truth of the allegations of the complaint is required, and no bond or recognizance is necessary other than that ordinarily used in civil actions; and no bond or recognizance shall be required where the action is brought by a state's attorney.

(P.B. 1978-1997, Sec. 542.)

Sec. 23-47. —Mandamus in Aid of Pending Action

An order in the nature of a mandamus may be made in aid of a pending action upon the application of any party, and any person claimed to be charged with the duty of performing the act in question may be summoned before the court by the service upon that person of a rule to show cause.

(P.B. 1978-1997, Sec. 543.)

Sec. 23-48. —Temporary Order of Mandamus

The plaintiff may attach to the complaint or subsequently file a motion under oath for a temporary order of mandamus to be effective until the final disposition of the cause. Such a motion shall be addressed to the court to which the action is returnable. The judicial authority may, if it appears upon hearing that the plaintiff will otherwise suffer irreparable injury, forthwith issue such an order or it may issue a rule to show cause why it should not be issued; but no such temporary order shall issue in any case, except where the state's attorney is the plaintiff, until the plaintiff has given to the opposing party a bond with surety, approved by the judicial authority, that the plaintiff will answer all damages should the plaintiff fail to prosecute the action to effect, unless the judicial authority shall find that the giving of such bond is unnecessary. Any party may at any time make a motion to the court that any such temporary order be dissolved.

(P.B. 1978-1997, Sec. 544.)

Sec. 23-49. —Pleadings in Mandamus

The defendant may file any proper motion directed to the allegations of the complaint, or, desiring to attack their legal sufficiency in law, a motion to strike, or a return in the form of an answer, and further pleadings shall continue as in civil actions until issues are joined, provided that, where an application for an order is made in a pending action, the extent to which and the time in which the respondent may plead shall be as directed by the judicial authority.

(P.B. 1978-1997, Sec. 545.)

Sec. 23-50. Writs of Error

In every writ of error there must be a special assignment of errors, in which the precise matters of error in the proceedings in the superior court relied upon as grounds of relief must be set forth. No others will be heard or considered by the judicial authority.

(P.B. 1978-1997, Sec. 546.)

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Sec. 23-51. Petition to Open Parking or Citation Assessment

(a) Any aggrieved person who wishes to appeal a parking or citation assessment issued by a town, city, borough or other municipality shall file with the clerk of the court within the time limited by statute a petition to open assessment with a copy of the notice of assessment annexed thereto. A copy of the petition with the notice of assessment annexed shall be sent by the petitioner by certified mail to the town, city, borough or municipality involved.

(b) Upon receipt of the petition, the clerk of the court, after consultation with the presiding judge, shall set a hearing date on the petition and shall notify the parties thereof. There shall be no pleadings subsequent to the petition.

(c) The hearing on the petition shall be de novo. There shall be no right to a hearing before a jury.

(P.B. 1978-1997, Sec. 546A.)

Sec. 23-52. Fact-Finding; Approval of Fact Finders

(a) Upon publication of notice requesting applications, any commissioner of the superior court admitted to practice in this state for at least five years may submit his or her name to the office of the chief court administrator for approval to be placed on a list of fact finders for one or more judicial districts.

(b) The chief court administrator shall have the power to designate fact finders for such term as the chief court administrator may fix and, in his or her discretion, to revoke such designation at any time.

(c) Applicants and fact finders must satisfactorily complete such training programs as may be required by the chief court administrator.

(P.B. 1978-1997, Sec. 546C.)

Sec. 23-53. —Referral of Cases to Fact Finders

The court, on its own motion, may refer to a fact finder any contract action pending in the superior court, except claims under insurance contracts for uninsured and or underinsured motorist coverage, in which money damages only are claimed, which is based upon an express or implied promise to pay a definite sum, and in which the amount, legal interest or property in controversy is less than $50,000, exclusive of interest and costs. Such cases may be referred to a fact finder only after the pleadings have been closed, a certificate of closed pleadings has been filed, and the time prescribed for filing a jury trial claim has expired.

(P.B. 1978-1997, Sec. 546D.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-54. —Selection of Fact Finders; Disqualification

(a) The fact finder shall be selected by the presiding civil judge for the court location where the case is pending.

(b) A fact finder may disqualify himself or herself upon his or her own application or upon application of a party. Should a party object to a fact finder's refusal to disqualify himself or herself for cause, such party may file an application for disqualification with the presiding civil judge in the court location where the case is pending.

(c) Should a fact finder disqualify himself or herself, the fact finder shall inform in writing the presiding civil judge in the court location where the case is pending.

(P.B. 1978-1997, Sec. 546E.)

Sec. 23-55. —Hearing in Fact-Finding

In matters submitted to fact-finding a record shall be made of the proceedings and the civil rules of evidence shall apply.

(P.B. 1978-1997, Sec. 546F.)

Sec. 23-56. —Finding of Facts

(a) The findings of facts shall be in writing, and in accordance with Section 19-8. The fact finder shall include in the finding of facts the number of days on which hearings concerning that case were held. It shall be signed by the fact finder and should include an award of damages, if applicable.

(b) The fact finder may accompany the finding of facts with a memorandum of decision including such matters as the fact finder may deem helpful in the decision of the case.

(c) Within 120 days of the completion of the fact finder's hearing the fact finder shall file the finding of facts with the clerk of the court with sufficient copies for all counsel.

(P.B. 1978-1997, Sec. 546G.)

Sec. 23-57. —Objections to Acceptance of Finding of Facts

(a) A party may file objections to the acceptance of a finding of facts on the ground that conclusions of fact stated in it were not properly reached on the basis of the subordinate facts found, or that the fact finder erred in rulings on evidence or in other rulings, or that there are other reasons why the finding of facts should not be accepted.

(b) Objections must be filed within fourteen days after the filing of the finding of facts.

(P.B. 1978-1997, Sec. 546H.)

Sec. 23-58. —Action by Judicial Authority

(a) After review of the finding of facts and hearing on any objections thereto, the judicial authority

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may take the following action: (1) render judgment in accordance with the finding of facts; (2) reject the finding of facts and remand the case to the fact finder who originally heard the matter for a rehearing on all or part of the finding of facts; (3) reject the finding of facts and remand the matter to another fact finder for rehearing; (4) reject the finding of facts and revoke the reference; (5) remand the case to the fact finder who originally heard the matter for a finding on an issue raised in an objection which was not addressed in the original finding of facts; or (6) take any other action the judicial authority may deem appropriate.

(b) The judicial authority may correct a finding of facts at any time before accepting it, upon the written stipulation of the parties.

(c) The fact finder shall not be called as a witness, nor shall the decision of the fact finder be admitted into evidence at another proceeding ordered by a judicial authority.

(P.B. 1978-1997, Sec. 546J.)

Sec. 23-59. —Failure to Appear at Hearing

(a) Where a party fails to appear at the hearing, the fact finder shall nonetheless proceed with the hearing and shall make a finding of facts, as may be just and proper under the facts and circumstances of the action, which shall be filed with the clerk of the court pursuant to Section 23-56 for consideration by the judicial authority pursuant to Section 23-58. If, pursuant to Section 23-57, the party who failed to appear files an objection to the acceptance of the finding of facts and the objection is sustained by the judicial authority, the judicial authority may require that party to pay to the court an amount not greater than the total fees then payable to the fact finder for services in the case.

(b) If all parties fail to appear at the hearing, the fact finder shall file a request with the court to dismiss the action. If the judicial authority does not dismiss the action it may be heard by the fact finder upon further order of the judicial authority. Such order may provide for the payment by any party to the court of an amount not greater than $100.

(P.B. 1978-1997, Sec. 546K.)

Sec. 23-60. Arbitration; Approval of Arbitrators

(a) Upon publication of notice requesting applications, any commissioner of the superior court admitted to practice in this state for at least five years, and who possesses civil litigation experience may submit his or her name to the office of the chief court administrator for approval to be placed on a list of arbitrators for one or more judicial districts.

(b) The chief court administrator shall have the power to designate arbitrators for such term as the chief court administrator may fix and, in his or her discretion, to revoke such designation at any time.

(c) Applicants and arbitrators must satisfactorily complete such training programs as may be required by the chief court administrator.

(P.B. 1978-1997, Sec. 546M.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-61. —Referral of Cases to Arbitrators

The court, on its own motion, may refer to an arbitrator any civil action in which, in the discretion of the court, the reasonable expectation of a judgment is less than $50,000, exclusive of interest and costs and in which a claim for a trial by jury and a certificate of closed pleadings have been filed. An award under this section shall not exceed $50,000, exclusive of legal interest and costs. Any party may petition the court to participate in the arbitration process hereunder.

(P.B. 1978-1997, Sec. 546N.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-62. —Selection of Arbitrators; Disqualification

(a) The arbitrator shall be selected by the presiding civil judge for the court location in which the case is pending.

(b) An arbitrator may disqualify himself or herself upon his or her own application or upon application of a party. Should a party object to an arbitrator's refusal to disqualify himself or herself for cause, such party may file an application for disqualification with the presiding civil judge in the court location where the case is pending.

(c) Should an arbitrator disqualify himself or herself, the arbitrator shall inform in writing the presiding civil judge in the court location where the case is pending.

(P.B. 1978-1997, Sec. 546O.)

Sec. 23-63. —Hearing in Arbitration

In matters submitted to arbitration no record shall be made of the proceedings and the strict adherence to the civil rules of evidence shall not be required.

(P.B. 1978-1997, Sec. 546P.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-64. —Decision of Arbitrator

(a) The arbitrator shall state in writing the decision on the issues in the case and the factual basis of the decision. The arbitrator shall include in the decision the number of days on which hearings concerning that case were held.

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(b) Within 120 days of the completion of the arbitration hearing the arbitrator shall file the decision with the clerk of the court together with sufficient copies for all counsel.

(P.B. 1978-1997, Sec. 546Q.)

Sec. 23-65. —Failure to Appear at Hearing before Arbitrator

(a) Where a party fails to appear at the hearing, the arbitrator shall nonetheless proceed with the hearing and shall render a decision, which shall be rendered as a judgment by the court. Such judgment may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. If the judicial authority opens or sets aside the judgment, it may resubmit the action to the arbitrator. Any order opening or setting aside the judgment may be upon condition that the moving party pay to the court an amount not greater than the total fees then payable to the arbitrator for services in the case.

(b) If all parties fail to appear at the hearing, the arbitrator shall file a request with the court to dismiss the action. If the judicial authority does not dismiss the action, it may be heard by the arbitrator upon further order of the judicial authority. Such order may provide for the payment by any party to the court of an amount not greater than one hundred dollars.

(P.B. 1978-1997, Sec. 546R.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

Sec. 23-66. —Claim for Trial De Novo in Arbitration; Judgment

(a) A decision of the arbitrator shall become a judgment of the court if no claim for a trial de novo is filed in accordance with subsection (c).

(b) A decision of the arbitrator shall become null and void if a claim for a trial de novo is filed in accordance with subsection (c).

(c) A claim for a trial de novo must be filed with the court clerk within twenty days after the deposit of the arbitrator's decision in the United States mail, as evidenced by the postmark. Thirty days after the filing of a timely claim for a trial de novo the court may, in its discretion, schedule the matter for a trial within thirty days thereafter. Only a party who appeared at the arbitration hearing may file a claim for a trial de novo. The decision of the arbitrator shall not be admissible in any proceeding resulting after a claim for a trial de novo pursuant to this section or from a setting aside of an award pursuant to General Statutes § 52-549aa.

(d) The judicial authority may refer any proceeding resulting from the filing of a demand for a trial de novo under subsection (c) of this section to a judge trial referee without the consent of the parties, and said judge trial referee shall have and exercise the powers of the superior court in respect to trial, judgment and appeal in the case, including a judgment of fifty thousand dollars or more.

(P.B. 1978-1997, Sec. 546S.) (Amended June 29, 1998, to take effect Jan. 1, 1999; subsection (c) was amended June 29, 1998, on an interim basis, pursuant to the provisions of Section 1-9 (c), to take effect Jan. 1, 1999; amended June 28, 1999, to take effect Jan. 1, 2000; amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 23-67. Alternative Dispute Resolution

The judicial authority may, upon stipulation of the parties, refer a civil action to a program of alternative dispute resolution agreed to by the parties. The judicial authority shall set a time limit on the duration of the referral, which shall not exceed ninety days. The referral of an action to such a program will stay the time periods within which all further pleadings, motions, requests, discovery and other procedures must be filed or undertaken until such time as the alternative dispute resolution process is completed or the time period set by the judicial authority has elapsed, whichever occurs sooner. Such referred action shall be exempt from the docket management program during the time of the referral.

(P.B. 1978-1997, Sec. 546T.) (Amended June 24, 2002, to take effect Jan. 1, 2003.)

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CHAPTER 24

SMALL CLAIMS

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For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 24-1. In General

(a) The general purpose of these rules is to secure the prompt and inexpensive hearing and determination of small claims by simplified procedure designed to allow the public maximum access to and use of the court in connection with such claims. Any comments as to the operation of the small claims court should be directed to the office of the chief court administrator.

(b) All proceedings shall be simple and informal. The services of an attorney at law are permissible but not obligatory. Notice to the representative for a party shall be equivalent to notice to such party.

(P.B. 1978-1997, Sec. 547.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-2. Allowable Actions

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

These rules shall apply to actions claiming money damages only, including actions against a non-resident defendant if he or she owns real or personal property in this state and actions against in-state and out-of-state corporations. Actions of libel and slander are not permitted under these rules. In no case shall the damages claimed exceed the jurisdictional monetary limit fixed by statute, including attorney's fees and other costs of collection, but exclusive of interest and costs.

(P.B. 1978-1997, Sec. 548.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-3. Institution of Actions

Actions may be instituted at the option of the claimant by the procedure herein provided for, or by writ and complaint returnable to the regular civil docket of the superior court.

(P.B. 1978-1997, Sec. 549.)

Sec. 24-4. Where Claims Shall Be Filed

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

(P.B. 1978-1997, Sec. 550.) (Amended June 29, 1998, to take effect Jan. 1, 1999.)

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Sec. 24-5. Venue

The venue for small claims shall be in accordance with the General Statutes.

(P.B. 1978-1997, Sec. 551.)

Sec. 24-6. Definition of ''Representative''

(a) Except as hereinafter limited, the word ''representative'' as used in this chapter shall mean: an attorney at law; one of a number of partners; one of a number of joint plaintiffs acting for all; an officer, manager or local manager of a corporation; an employee of an unincorporated business which is not a partnership; the commissioner of administrative services or his or her authorized representative while acting in an official capacity; the chief court administrator or his or her authorized representative while acting in an official capacity. The word ''representative'' shall not mean a consumer collection agency as defined in chapter 669 of the General Statutes or an individual acting pursuant to a power of attorney.

(b) It is prohibited for one who is not an attorney at law to receive a fee for the representation of any party.

(P.B. 1978-1997, Sec. 552.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-7. What Constitutes File

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

The file shall consist of the small claims writ and notice of suit, documents relating to the service of the writ, allowable pleadings and motions, and documents relating to postjudgment proceedings. All continuances granted pursuant to Section 24-15 shall be documented.

(P.B. 1978-1997, Sec. 553.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-8. Institution of Small Claims Actions; Beginning of Action

The signature by the plaintiff, or representative, on the small claims writ and notice of suit, and the filing of the writ with the clerk, together with the payment of all required fees, shall be deemed the beginning of the action. Any plaintiff or representative who wishes to obtain a judgment pursuant to the provisions of Section 24-24 shall also file the affidavits required by that section.

(P.B. 1978-1997, Sec. 556.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-9. —Preparation of Writ

The small claims writ and notice of suit shall be on a form prescribed by the office of the chief court administrator. The plaintiff, or representative, shall state the nature and amount of the claim on the writ in concise, untechnical form and said writ is to be signed by either the plaintiff, or representative, under oath, together with an affidavit as to the military status of the defendant. The oath shall provide that the signer has read the claim, and that to the best of the signer's knowledge, information and belief there is good ground to support it. If the claim involves items of more than a convenient length for entry on the writ in full, the plaintiff, or representative, shall attach to the writ a list of such items. The plaintiff, or representative, shall also state on the writ the plaintiff's and the defendant's places of residence or other addresses.

(P.B. 1978-1997, Sec. 557.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

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

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

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

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

(P.B. 1978-1997, Sec. 559.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-11. —Further Service of Claim

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

(P.B. 1978-1997, Sec. 561.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

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Sec. 24-12. —Answer Date

The answer date shall not be less than fifteen nor more than thirty days after the date notice is mailed to or service is made on the defendant pursuant to Section 24-10 or after the date service is made on the defendant pursuant to Sections 24-11 or 24-13.

(P.B. 1978-1997, Sec. 562.)

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

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

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

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

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

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

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

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

(P.B. 1978-1997, Sec. 563.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 26, 2000, to take effect Jan. 1, 2001.)

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

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

(P.B. 1978-1997, Sec. 564.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-15. —Scheduling of Hearings; Continuances

(a) A hearing shall be scheduled not less than six and not more than forty-five days after the answer date.

(b) Continuances

(1) In any case where the plaintiff claims prejudice because of an unexpected defense or counterclaim or where either party shows good cause therefor, the judicial authority may postpone the hearing of any claim upon such terms as the judicial authority may order.

(2) A new hearing shall be scheduled within ninety days of the date set for the hearing which was postponed.

(3) Requests for continuances shall be made in writing to the clerk and shall state the reasons therefor. The party requesting the continuance shall first attempt to notify the other party of the request and shall include in the request when such notice was given and whether the other party agreed to the request. Requests for a continuance made prior to the scheduled hearing date shall be decided by the clerk. Requests for a continuance made on the scheduled date shall be decided by the judicial authority. All requests shall be acted on as soon as possible. Oral requests for continuance shall be permitted by the clerk only in extraordinary circumstances.

(4) The clerk shall notify all parties of the decision on any request for continuance and of the new hearing date.

(P.B. 1978-1997, Sec. 565.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

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

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

(a) A defendant, unless the judicial authority shall otherwise order, shall be defaulted and judgment shall enter in accordance with the provisions of Section 24-24, unless such defendant shall, personally or by representative, not later than the answer date, notify the clerk in writing of his or her defense to the claim. The answer should state fully and specifically, but in concise and untechnical form, such parts of the claim as are contested, and the grounds thereof, provided that an answer of general denial shall be sufficient for purposes of this section. Upon the filing of an answer the clerk shall set the matter down for hearing by the judicial authority and mail a copy of the answer to the plaintiff or representative.

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

(P.B. 1978-1997, Sec. 567.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-17. —Prohibition of Certain Pleadings

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

(P.B. 1978-1997, Sec. 568.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-18. —Plaintiff to Inquire as to Answer Filed

[Repealed as of Jan. 1, 2001.]

Sec. 24-19. —Claim of Setoff or Counterclaim

The defendant, or representative may claim any setoff or counterclaim within the jurisdiction of the small claims court. Such written setoff or counterclaim may be filed at any time on or before the answer date or upon the granting of a motion to open. Upon the making of such claim by the defendant, the clerk shall give notice to the plaintiff by first class mail, of the setoff or counterclaim and shall notify the parties of the new answer date. The defendant's claim shall be answered within the time and in the manner provided by Section 24-16. The original claim, and the claim of setoff or counterclaim, shall be deemed one case.

(P.B. 1978-1997, Sec. 570.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-20. —Amendment of Claim or Answer, Setoff or Counterclaim; Motion to Dismiss

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

The judicial authority may at any time allow any claim or answer, setoff or counterclaim to be amended. A party may challenge jurisdiction by way of a motion to dismiss.

(P.B. 1978-1997, Sec. 571.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

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

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

(Adopted June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-21. Transfer to Regular Docket

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

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

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

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

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

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

(P.B. 1978-1997, Sec. 572.) (Amended June 29, 1998, to take effect Jan. 1, 1999; amended June 26, 2000 to take effect Jan. 1, 2001.)

Sec. 24-22. Hearings in Small Claims Actions; Subpoenas

Subpoenas, if requested, shall be issued by the clerk without fee, and may be issued upon the clerk's own motion or by order of the judicial authority. The party requesting the subpoena shall pay the fees for service and witness fees. An application for issuance of subpoena shall not be required in small claims matters.

(P.B. 1978-1997, Sec. 574.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-23. —Procedure

Witnesses shall be sworn; but the judicial authority shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case in accordance with substantive law.

(P.B. 1978-1997, Sec. 575.)

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

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

(b) In order for the judicial authority to render any judgment pursuant to this section at the time set for entering a default, the following affidavits must be filed by the plaintiff:

(1) An affidavit of debt signed by the plaintiff. A small claims writ and notice of suit signed and sworn to by the plaintiff shall be considered an affidavit of debt for purposes of this section. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed and the rate of interest.

(A) If the instrument on which the contract is based is a negotiable instrument, the affidavit shall state that the instrument is now owned by the plaintiff and a copy of the executed instrument shall be attached to the affidavit.

(B) If the plaintiff has claimed any lawful charges, including reasonable fees for an attorney at law, the plaintiff shall include in the affidavit of debt the terms of the contract providing for such charges and the amount claimed.

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

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

(P.B. 1978-1997, Sec. 577.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

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

If the defendant does not file an answer by the answer date and if the case does not come within the purview of Section 24-24, the clerk shall set a date for hearing and the judicial authority shall require the presence of the plaintiff or representative.

(P.B. 1978-1997, Sec. 578.)

Sec. 24-26. —Failure of a Party to Appear before the Court when Required

(a) If the plaintiff or representative fails to appear before the court on the hearing date, the judicial authority may dismiss the claim for want of prosecution, render a finding on the merits for the defendant or make such other disposition as may be proper.

(b) If the defendant fails to appear before the court at any time set for hearing, the judicial authority may render judgment in favor of the

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plaintiff based on such proofs as it deems necessary to establish the amount due under the claim, or make such other disposition as may be proper, provided that the plaintiff has appeared at the hearing.

(P.B. 1978-1997, Sec. 579.)

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

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

(P.B. 1978-1997, Sec. 580.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-28. —Finality of Judgments and Decisions

Except as provided in Section 24-31, the judgments and decisions rendered in the small claims session are final and conclusive. (See General Statutes § 51-197a.)

(P.B. 1978-1997, Sec. 581.)

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

(Amended June 26, 2000, to take effect Jan. 1, 2001.)

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

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

(P.B. 1978-1997, Sec. 582.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-30. —Satisfying Judgment

The judicial authority may order that the judgment shall be paid to the prevailing party at a certain date or by specified installments, and may stay the issue of execution and other supplementary process during compliance with such order. Such stay may be modified and vacated at any time for good cause. When the judgment is satisfied in a small claims action, the party recovering the judgment shall file a written notice thereof with the clerk who shall record the judgment as satisfied, identifying the name of the party and the date. An execution returned fully satisfied shall be deemed a satisfaction of judgment and the notice required in this section shall not be filed. The judicial authority may, upon motion, make a determination that the judgment has been satisfied.

(P.B. 1978-1997, Sec. 583.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 25, 2001, to take effect Jan. 1, 2002; amended June 30, 2003, to take effect Jan. 1, 2004.)

Sec. 24-31. —Opening Judgment; Costs

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

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

(P.B. 1978-1997, Sec. 584.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

Sec. 24-32. Execution in Small Claims Actions

(a) Pursuant to the General Statutes, the judgment creditor or the representative of the judgment creditor may file with the court a written application on forms prescribed by the office of the chief court administrator for an execution to collect an unsatisfied money judgment.

(b) Service of an initial set of interrogatories, on forms prescribed by the office of the chief court administrator relevant to obtaining satisfaction of a small claims money judgment shall be made by sending the interrogatories by certified mail, return

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receipt requested, to the person from whom discovery is sought.

(P.B. 1978-1997, Sec. 585.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 24, 2002, to take effect Jan. 1, 2003.)

Sec. 24-33. Costs in Small Claims

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

(P.B. 1978-1997, Sec. 590.) (Amended June 26, 2000, to take effect Jan. 1, 2001.)

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