

Minutes of the Meeting
Juvenile Task Force
November 15, 2007

On Thursday, November 15, 2007 the Juvenile Task Force met in the Superior Court for Juvenile Matters at Hartford, 920 Broad Street, 4th floor, Courtroom C, Hartford from 9:00 a.m. to approximately 11:45 a.m.

Members in attendance were:

Hon. Christine E. Keller, Chair
Hon. Marcia J. Gleeson
Hon. John C. Driscoll
Lori Hellum, Esq.

Nancy A. Porter, Esq.
Susan Pearlman, Esq.
Carolyn Signorelli, Esq.
Ben Zivyon, Esq.

Elizabeth Duryea, Esq. was also in attendance. Francis Carino, Esq., Cynthia L. Cunningham, Esq., Maria M. Holzberg, Esq., Julia O'Leary, Christine P. Rapillo, Esq., Robert Shaver, Esq., and Bruce Tonkonow, Esq. were not in attendance at this meeting primarily because the discussion focused on the Practice Book chapters that address child protection proceedings (as opposed to delinquency matters).

1. The Task Force reviewed and approved Section 3-9 as set forth in Appendix A.
2. The Task Force reviewed and approved Section 34a-1 as set forth in Appendix B.
3. The Task Force reviewed and amended Chapter 32a as follows:
 - Section 32a-1 (a). In response to an AAG recommendation, the Task Force amended this section to reference the "first hearing." The Task Force considered an AAG proposal to include in this section a provision about adverse inferences. The Task Force discussed this issue and tabled it for further consideration at the December 7 meeting.
 - Section 32a-1 (c). In response to an AAG recommendation, the Task Force included this new subparagraph.
 - Section 32a-1 (g). In response to an AAG recommendation, the Task Force added language regarding appointment of counsel that conforms to General Statutes § 46b-137 (b).

- Section 32a-2 (a). The Task Force considered an AAG proposal to include a new provision in this section concerning a competency hearing for parents in termination of parental rights proceedings. The Task Force discussed this issue and tabled it for further consideration at its December 7 meeting.
- Section 32a-2 (d). In response to the CCPA's procedures and recommendation, the Task Force amended this section.
- Section 32a-5. The Task Force discussed this section and revised the commentary to include the correct citation to federal law.
- Section 32a-6. In response to the CCPA's recommendation, the Task Force retained this provision.
- Section 32a-8. In response to an AAG recommendation, the Task Force discussed the impact of HIPAA on this section. The Task Force tabled possible revision for further consideration at its December 7 meeting.

The revisions to various sections of Chapter 32a are set forth in Appendix C attached hereto.

4. The Task Force reviewed and amended Chapter 33a as follows:

- Section 33a-7 (a) (5). The Task Force considered an AAG proposal to include a provision in this section regarding the respondent's right to remain silent. The Task Force will discuss this proposal further at its December 7 meeting, including the possibility of adding such a provision to Section 35a-1.
- Section 33a-7 (a) (9). The Task Force amended this section in accordance with an AAG proposal.
- Section 33a-7 (d). The Task Force discussed a proposal concerning consolidations. The Task Force tabled this issue for further discussion at its December 7 meeting.

The revisions to various sections of Chapter 33a are set forth in Appendix D attached hereto.

5. The Task Force reviewed and amended Chapter 35a as follows:

- Section 35a-1. In response to an AAG recommendation the Task Force made subparagraph (d) new section 35a-1A. Subsequent to the meeting, Judge Keller reviewed this section and determined that the substance of subparagraphs (a) and

(b) appear in Sections 33a-7 (2) and (7). Therefore, she recommends that those subparagraphs be deleted. Additionally, Judge Keller revised the title to this section.

- Section 35a-4 (d). The Task Force considered an AAG recommendation to set a limit on an intervenor's participation in a case. The Task Force discussed the issue and tabled it for further discussion at its December 7 meeting. Subsequent to the meeting, Judge Keller amended the commentary to this subparagraph.
- Section 35a-8. The Task Force amended this section to clarify that all parties are expected to be present at trial. Subsequent to the meeting, Judge Keller amended the section to clarify that failure to appear may result in default.
- Section 35a-9. The Task Force amended this section to include motions in limine.
- Section 35a-14 (b). The Task Force clarified notice requirements.
- Section 35a-14 (d). In response to an AAG recommendation, the Task Force recommended new subparagraph (d) to address revocations. The rule was drafted to include language from existing subparagraphs (b) and (c) together with new language.
- Section 35a-19 (c). The Task Force clarified this subparagraph.

The revisions to various sections of Chapter 35a and Judge Keller's recommendations are set forth in Appendix E attached hereto.

6. The next Task Force Meeting is scheduled for December 7, 2007 at 9:00.

Attachments

APPENDIX A (11-15-07 mins)

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 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 family with service needs supervision [~~or~~] during the period of any commitment to the commissioner of the department of children and families or protective supervision. [~~or during the period until final adoption following termination of parental rights~~]; [~~however, in the absence of a specific request, no~~] An attorney appointed by the Chief Child Protection Attorney to represent a parent in a [prior] pending neglect or uncared for proceeding shall [automatically] continue to represent the parent for any subsequent petition to terminate parental rights if the parent appears at the first hearing on the termination petition and qualifies for appointed counsel, unless the attorney files a motion to withdraw pursuant to Section 3-10 that is granted by the judicial authority or the parent requests a new attorney. The attorney shall represent the client in connection with appeals, subject to Section [~~35-4 (b)~~] 35a-21, and with [~~petitions for extensions,~~] motions for review of permanency plans, revocations or postjudgment motions and shall have access to any documents filed in court. The attorney for the child shall continue to represent the child in all proceedings relating to the child, including termination of parental rights and during the period until final adoption following termination of parental rights.

HISTORY—2007: In 2007, the words “or civil union” were inserted in the first sentence of subsection © 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.

COMMENTARY: Proposed revisions assure that at the first hearing there is an attorney present and are consistent with existing practice.

APPENDIX B (11-15-07 Mins)

Sec. 34a-1. Motions, Requests and Amendments

(a) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to juvenile matters in the superior court as defined by General Statutes § 46b-121.

(b) The provisions of Sections 8-2, 9-5, 9-22, 10-12 (a), 10-13, 10-14, 10-17, 10-18, 10-29, 10-62, 11-4, 11-5, 11-6, 11-7, 11-8, 11-10, 11-11, 11-12, 11-13, 12-1, 12-2, [and] 12-3 and 17-21 of the rules of practice shall apply to juvenile matters as defined by General Statutes § 46b-121.

(c) A motion or request, other than a motion made orally during a hearing, shall be in writing. An objection to a request shall also be in writing. A motion, request or objection to a request shall have annexed to it a proper order and where appropriate shall be in the form called for by Section 4-1. The form and manner of notice shall adequately inform the interested parties of the time, place and nature of the hearing. A motion request, or objection to a request whose form is not therein prescribed shall state in paragraphs successively numbered the specific grounds upon which it is made. A copy of all written motions requests, or objections to requests shall be served on the opposing party or counsel pursuant to Sections 10-12 (a) and (c), 10-13, 10-14 and 10-17. All motions or objections to requests shall be given an initial hearing by the judicial authority within fifteen days after filing provided reasonable notice is given to parties in interest, or notices are waived; 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 docket.

(d) A petition may be amended at any time by the judicial authority on its own motion or in response to a motion prior to any final adjudication. When an amendment has been so ordered, a continuance shall be granted whenever the judicial authority finds that the new allegations in the petition justify the need for additional time to permit the parties to respond adequately to the additional or changed facts and circumstances.

(e) If the moving party determines and reports that all counsel and pro se parties agree to the granting of a motion or agree that the motion may be considered without the need for oral argument or testimony and the motion states on its face that there is such an agreement, the judicial authority may consider and rule on the motion without a hearing.

COMMENTARY: The proposed revision adds the military affidavit rule for child protection cases. Case law supports this addition.

APPENDIX C (11-15-07 Mins)

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

Sec.

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

32a-2. Hearing Procedure; Subpoenas

32a-3. Standards of Proof

32a-4. Child or Youth Witness

Sec. 32a-5. Consultation with Child or Youth [in the Court]

32a-6. Interpreter

32a-7. Records

32a-8. Use of Confidential Alcohol or Drug Abuse Treatment Records as Evidence

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

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

[(b) The parents or guardian of a child or youth and the child or youth have the rights of confrontation and cross-examination and may be represented by counsel in each and every phase of any and all proceedings in juvenile matters, including appeals, and if they are unable to afford counsel, counsel will be appointed to represent them if such is their request. The judicial authority shall appoint counsel for these parties or any of them (1) upon request and upon a finding that the party, is, in fact, financially unable to employ counsel, or (2) in the case of counsel for the child, whether a request is made or not, in any proceeding on a juvenile matter in which the custody of a child is at issue, or if in the opinion of the judicial authority the interests of the child and the parents conflict, or (3) in

the case of counsel for the child and the parent, whether a request is made or not, if in the opinion of the judicial authority a fair hearing necessitates such an appointment.]

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

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

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

(e) If the judicial authority, even in the absence of a request for appointment of counsel, determines that the interests of justice require the provision of an

attorney to represent the child's or youth's parent or parents or guardian, or other party, the judicial authority may appoint an attorney to represent any such party and shall notify the Chief Child Protection Attorney who shall assign an attorney to represent any such party. For the purposes of determining eligibility for appointment of counsel, the judicial authority shall cause the parents or guardian of a child or youth to complete a written statement under oath or affirmation setting forth the parents' or guardian's liabilities and assets, income and sources thereof, and such other information as the Commission on Child Protection shall designate and require on forms adopted by said commission.

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

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

has a right to refuse to make any statement and that any statement the respondent makes may be introduced in evidence against him or her.

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

COMMENTARY It is recommended that current paragraph 32a-1(b) be deleted and its content be placed in three proposed subparagraphs (b), (c) and (d) based upon Conn. Gen. Stat. Sec 46b-129a which specifies that the child shall have the right to counsel and a guardian ad litem in child protection proceedings. Additional revisions to these sections are made pursuant to Sec. 4 and Sec. 7 of Public Act 07-159, which amends C.G.S. Sec. 46b-136. The proposed revision to subparagraph (g) conforms to C.G.S. Sec. 46b-137(b).

Sec. 32a-2. Hearing Procedure; Subpoenas

(a) All hearings are essentially civil proceedings except where otherwise provided by statute. Testimony may be given in narrative form and the proceedings shall at all times be as informal as the requirements of due process and fairness permit.

(b) Issuance, service, and compliance with subpoenas are governed by General Statutes § 52-143 et seq.

(c) Any pro se indigent party may request the clerk of the court to issue subpoenas for persons to testify before the judicial authority. Pro se indigent parties [and court-appointed counsel] shall obtain prior approval from the judicial authority to issue subpoenas and seek reimbursement for the costs thereof.

(d) Counsel assigned by the Chief Child Protection Attorney may issue subpoenas as necessary, and seek or instruct the process server to seek reimbursement for the costs thereof pursuant to the policies and procedures of the Chief Child Protection Attorney.

COMMENTARY: The proposed revisions to in subparagraph (c) are made pursuant to Public Act 07-159, Sec. 4. Subparagraph (d) is proposed to reflect the Chief Child Protection Attorney's procedures, which govern the manner in which counsel may issue subpoenas

Sec. 32a-3. Standards of Proof

(a) The standard of proof applied in a neglect, uncared for or dependency proceeding is a fair preponderance of the evidence.

(b) The standard of proof applied in a decision to terminate parental rights or a finding that efforts to reunify a parent with a child or youth are no longer appropriate, is clear and convincing evidence.

(c) Any child custody proceedings, except delinquency, involving removal of an Indian child from a parent or Indian custodian for placement shall, in addition, comply with the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq.

Sec. 32a-4. Child or Youth Witness

(a) All oral testimony shall be given under oath. For child or youth witnesses, the oath may be “you promise that you will tell the truth.” The judicial authority may, however, admit the testimony of a child or youth without the imposition of a formal oath if the judicial authority finds that the oath would be meaningless to the particular child or youth, or would otherwise inhibit the child or youth from testifying freely and fully.

(b) Any party who intends to call a child or youth as a witness shall first file a motion seeking permission of the judicial authority.

(c) In any proceeding when testimony of a child or youth is taken, an adult who is known to the child or youth and with whom the child or youth feels comfortable shall be permitted to sit in close proximity to the child or youth during the child’s or youth’s testimony without obscuring the child or youth from view and the attorneys shall ask questions and pose objections while seated and in a manner which is not intimidating to the child or youth. The judicial authority shall minimize any distress to a child or youth in court.

(d) The judicial authority with the consent of all parties may privately interview the child or youth. Counsel may submit questions and areas of concern for examination. The knowledge gained in such a conference shall be shared on the record with counsel and, if there is no legal representative, with the parent.

(e) When the witness is the child or youth of the respondent, the respondent may be excluded from the hearing room upon a showing by clear and convincing evidence that the child or youth witness would be so intimidated or inhibited that

trustworthiness of the child or youth witness is seriously called into question. In such an instance, if the respondent is without counsel, the judicial authority shall summarize for the respondent the nature of the child's or youth's testimony.

COMMENTARY: Standardization of terms.

Sec. 32a-5. Consultation with Child or Youth [in the Court]

(a) In any permanency hearing held with respect to the child or youth, including, but not limited to, any hearing regarding the transition of the child or youth from foster care to independent living, the judicial authority shall assure that there is consultation with the child or youth in an age-appropriate manner regarding the proposed permanency or transition plan for the child or youth.

[a] (b) For good cause shown, the child or youth who is the subject of the hearing may be excluded from the courtroom.

COMMENTARY: The Social Security Act, 42 U.S.C. § 675(5)(C) requires a new paragraph (a). Federal law now requires that an attorney consult with his or her child client on that child's position on any proposed permanency or transition plan and report it to the court at the permanency hearing.

Sec. 32a-6. Interpreter

The judicial authority shall provide an official interpreter to the parties as necessary to ensure their understanding of, and participation in, the proceedings.

Sec. 32a-7. Records

(a) Except as otherwise provided by statute, all records maintained in juvenile matters brought before the judicial authority, either current or closed, including the transcripts of hearings, shall be kept confidential.

(b) Except as otherwise provided by statute, no material contained in the court record, including the social study, medical or clinical reports, school reports, police reports and the reports of social agencies, may be copied or otherwise reproduced in written form in whole or in part by the parties or their counsel without the express consent of the judicial authority.

Sec. 32a-8. Use of Confidential Alcohol or Drug Abuse Treatment Records As Evidence

(a) Upon a determination by the judicial authority that good cause exists pursuant to federal law and regulations, the judicial authority may admit evidence of any party's alcohol or drug treatment by a facility subject to said regulations.

(b) A party seeking to introduce substance abuse treatment records shall submit a motion to the judicial authority requesting permission to subpoena such records and explaining the need for them, and shall also file a motion to disclose such confidential records and permit testimony regarding them. The motion for permission to subpoena such records may be signed ex parte by the judicial authority. If the judicial authority approves the motion, such records may be subpoenaed and submitted to the court under seal, and the judicial authority shall set a date for the parties and service providers to be heard on the motion to disclose confidential alcohol or drug abuse treatment records.

APPENDIX D (11-15-07 Mins)

**CHAPTER 33a
PETITIONS FOR NEGLECT, UNCARED FOR,
DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS:
INITIATION OF PROCEEDINGS, ORDERS OF TEMPORARY CUSTODY
AND PRELIMINARY HEARINGS**

Sec.

33a-1. Initiation of Judicial Proceeding; Contents of Petitions and Summary of Facts

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

33a-3. Venue

33a-4. Identity or Location of Respondent Unknown

33a-5. Address of Person Entitled to Personal Service Unknown

33a-6. Order of Temporary Custody; Ex Parte Orders and Orders to Appear

33a-7. Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority

33a-8. Emergency, Life-Threatening Medical Situations—Procedures

Sec. 33a-1. Initiation of Judicial Proceeding; Contents of Petitions and Summary of

Facts

(a) The petitioner shall set forth with reasonable particularity, including statutory references, the specific conditions which have resulted in the situation which is the subject of the petition.

(b) A summary of the facts substantiating the allegations of the petition shall be attached thereto and shall be incorporated by reference.

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

(a) A summons accompanying a petition alleging that a child or youth is neglected, uncared for or dependent, along with the summary of facts, shall be served by the petitioner on the respondents and provided to the office of the attorney general at least fourteen days before the date of the initial plea hearing on

the petition, which shall be held not more than forty-five days from the date of filing the petition.

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

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

(d) A summons accompanying any petition filed with an application for order of temporary custody shall be served by the petitioner on the respondents and provided to the office of the attorney general as soon as practicable after the issuance of any ex parte order or order to appear, along with such order, any sworn statements supporting the order, the summary of facts, the specific steps provided by the judicial authority, and the notice required by Section 33a-6.

COMMENTARY: Changes made based upon Public Act 04-128 amendments to C.G.S. Secs. 17a-112(i) and 45a-716(a).

Sec. 33a-3. Venue

All child protection petitions shall be filed within the juvenile matters district where the child or youth resided at the time of the filing of the petition, but any child or youth born in any hospital or institution where the mother is confined at the time of birth shall be deemed to have residence in the district wherein such child's or youth's mother was living at the time of her admission to such hospital or institution. When placement of a child or youth has been effected prior to filing of a petition, venue shall be in the district wherein the custodial parent is living at the time of the filing of the petition.

Sec. 33a-4. Identity or Location of Respondent Unknown

(a) If the identity or present location of a respondent is unknown when a petition is filed, an affidavit shall be attached reciting the efforts to identify and locate that respondent. [The judicial authority shall require reasonable efforts to identify and locate the absent respondent.] Notice by publication to unidentified persons shall be required in any petition for termination of parental rights.

(b) Subject to section 32a-1 of these rules, [T]he judicial authority may [appoint] notify the Chief Child Protection Attorney to assign counsel for an unidentified parent or an absent parent who has received only constructive notice of termination of parental rights proceedings, for the limited purposes of conducting a reasonable search for the unidentified or absent parents and reporting to the judicial authority before any adjudication.

COMMENTARY: The proposed deletion in paragraph (a) is to remove language that is redundant and inaccurately suggests that a different reasonable efforts finding is required. Conn. Gen. Stats. Sec 46b-128(b). Paragraph (b) - changes are required by Public Act 07-159.

Sec. 33a-5. Address of Person Entitled to Personal Service Unknown

If the address of any person entitled to personal service is unknown, service may be by publication as ordered by the judicial authority.

Sec. 33a-6. Order of Temporary Custody; Ex Parte Orders and Orders to Appear

(a) If the judicial authority finds, based upon the specific allegations of the petition and other verified affirmations of fact provided by the applicant, that there is reasonable cause to believe that: (1) the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from his surroundings and (2) that as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety, the judicial authority shall, upon proper application at the time of filing of the petition or at any time subsequent thereto, either (A) issue an order to the respondents or other persons having responsibility for the care of the child or youth to appear at such time as the judicial authority may designate to determine whether the judicial authority should vest in some suitable agency or person the child's or youth's temporary care and custody pending disposition of the petition, or (B) issue an order ex parte vesting in some suitable agency or person the child's or youth's temporary care and custody.

(b) A preliminary hearing on any ex parte custody order or order to appear issued by the judicial authority shall be held as soon as practicable but [no more] not later than ten days [from] after the issuance of such order.

(c) If the application is filed subsequent to the filing of the petition, a motion to amend the petition or to modify protective supervision shall be filed no later than the next business date before such preliminary hearing.

(d) Upon issuance of an ex parte order or order to appear, the judicial authority shall provide to the commissioner of the department of children and families and the respondents specific steps necessary for each to take for the respondents to retain or regain custody of the child or youth.

(e) An ex parte order or order to appear shall be accompanied by a conspicuous notice to the respondents written in clear and simple language containing at least the following information: (i) That the order contains allegations that conditions in the home have endangered the safety and welfare of the child or youth; (ii) that a hearing will be held on the date on the form; (iii) that the hearing is the opportunity to present the [parents'] respondents' position concerning the alleged facts; (iv) that the respondent has the right to remain silent; (v) that an attorney will be appointed for [parents] respondents who cannot afford an attorney by the Chief Child Protection Attorney; (vi) that such [parents] respondents may apply for [a court-appointed attorney] state paid representation by going in person to the court address on the form and are advised to go as soon as possible in order for the attorney to prepare for the hearing; and (vii) if such [parents] respondents have any questions concerning the case or appointment of counsel, any such [parent] respondent is advised to go to the court, or [call] contact the clerk's office

office [at the court], or contact the Chief Child Protection Attorney as soon as possible.

(f) Upon application for [appointed counsel] state paid representation, the judicial authority shall promptly determine eligibility and, if the respondent is eligible, promptly [appoint counsel] notify the Chief Child Protection Attorney who shall assign an attorney to provide representation. In the absence of such a request prior to the preliminary hearing, the [judicial authority] Chief Child Protection Attorney shall ensure that standby counsel is available at such hearing to assist and/or represent the respondents.

COMMENTARY: Paragraph (b) - Public Act 06-102, Sec. 9 amendment to C.G.S. Sec. 46b-129(b). Paragraphs (e) and (f) – Public Act 07-159, Sec. 4.

Sec. 33a-7. Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority

(a) At the preliminary hearing on the order of temporary custody or order to appear, or at the first hearing on a petition for neglect, uncared for, dependency, or termination of parental rights, the judicial authority shall:

(1) first determine whether all necessary parties are present and that the rules governing service on or notice to [for] nonappearing parties, and notice to grandparents, foster parents, relative caregivers and pre-adoptive parents have been complied with, and shall note these facts for the record;

(2) inform the respondents of the allegations contained in all petitions and applications that are the subject of the hearing;

(3) inform the respondents of their right to remain silent;

(4) ensure that an attorney, and where appropriate, a separate guardian ad litem, has been [appointed] assigned to represent the child or youth by the Chief Child Protection Attorney, in accordance with General Statutes §§ 46b-123e, 46b-129a (2), [and] 46b-136 and section 32a-1 of these rules;

(5) advise the respondents of their right to counsel and their right to have counsel [appointed] assigned if they are unable to afford representation, determine eligibility for state paid representation and notify the Chief Child Protection Attorney to [and, upon request, appoint] assign an attorney to represent any respondent who is unable to afford representation, as determined by the judicial authority;

(6) advise the respondents of the right to a hearing on the petitions and applications, to be held [within] not later than ten days [from] after the date of the preliminary hearing if the hearing is pursuant to an ex parte order of temporary custody or an order to appear;

(7) notwithstanding any prior statements acknowledging responsibility, inquire of the custodial respondent in neglect, uncared for and dependency matters, and of all respondents in termination matters, whether the allegations of the petition are presently admitted or denied;

(8) make any interim orders, including visitation, that the judicial authority determines are in the best interests of the child or youth, and order specific steps the commissioner and the respondents shall take for the respondents to regain or to retain custody of the child or youth;

(9) take steps to determine the identity of the father of the child or youth, including ordering genetic testing, if necessary and appropriate, and order service of

the amended petition citing in the putative father and notice of the hearing date, if any, to be made upon him;

(10) if the person named as the putative father appears, and admits that he is the biological father, provide him and the mother with the notices which comply with General Statutes § 17b-27 and provide them with the opportunity to sign a paternity acknowledgment and affirmation on forms which comply with General Statutes § 17b-27, which documents shall be executed and filed in accordance with [chapter 815y of the] General Statutes § 46b-172 and a copy delivered to the clerk of the superior court for juvenile matters; and

(11) in the event that the person named as a putative father appears and denies that he is the biological father of the child or youth, advise him that he may have no further standing in any proceeding concerning the child or youth, and either order genetic testing to determine paternity or direct him to execute a written denial of paternity on a form promulgated by the office of the chief court administrator. Upon execution of such a form by the putative father, the judicial authority may remove him from the case and afford him no further standing in the case or in any subsequent proceeding regarding the child or youth until such time as paternity is established by formal acknowledgment or adjudication in a court of competent jurisdiction.

(b) At the preliminary hearing on the order of temporary custody or order to appear, the judicial authority may provide parties an opportunity to present argument with regard to the sufficiency of the sworn statements.

(c) If any respondent fails, after proper service, to appear at the preliminary hearing, the judicial authority may enter or sustain an order of temporary custody.

(d) Upon request, or upon its own motion, the judicial authority shall schedule a hearing on the order for temporary custody or the order to [show cause] appear to be held as soon as practicable but not [more] later than ten days [from] after the date of the preliminary hearing. Such hearing shall be held on consecutive days except for compelling circumstances or at the request of the respondents.

[(e) When the allegations are denied, necessitating testimony in support of the petitioner's allegations, the case shall be continued for a case status conference and a subsequent hearing before a judicial authority who has not read the case status conference memo. Said case status conference may be waived by the judicial authority, on its own motion or upon request of the parties.]

COMMENTARY: Paragraph (a)(1) – change is based upon Judge Quinn's standing order concerning foster parents in response to federal requirements and Public Act 06-37, which required notification to grandparents and PA 07-174, Sec. 3. Paragraphs (a)(4) and (a)(5) – changes are necessitated by Public Act 07-159, Sec. 5. Paragraph (a)(6) – change is necessitated by Public Act 06-102, Sec. 9 and Conn. Gen Stat. sec. 46b-129(d). Paragraphs (a)(9)-(a)(11) clarification based upon Conn. Gen Stat. Sec. 46b-129(d)(7), specifically, the option of genetic testing to determine the identity of the father. Where a respondent has in another court been legally adjudicated the father, genetic testing is not appropriate absent reopening of an original judgment of paternity. Deletion of paragraph (e) – The substance of this paragraph appears in section 35a-2(a), which is a more appropriate place for it.

Sec. 33a-8. Emergency, Life-Threatening Medical Situations—Procedures

When an emergency medical situation exists which requires the immediate assumption of temporary custody of a child or youth by the commissioner of the department of children and families in order to save the child's or youth's life, [the application for a temporary custody order shall be filed together with a neglect or uncared for petition.] [T]two physicians under oath must attest to the need for such medical treatment. Oral permission by the judicial authority may be given after receiving sworn oral testimony of two physicians that the specific surgical or medical intervention is absolutely necessary to preserve the child's or youth's life. The judicial authority may grant the temporary custody order ex parte or may schedule an immediate hearing prior to issuing said order. At any immediate hearing the two physicians shall be available for testifying, and the judicial authority shall appoint counsel for the child or youth and notify the Chief Child Protection Attorney as soon as practicable that said counsel has been appointed. If the judicial authority grants the temporary custody order ex-parte by oral permission, based on the sworn oral testimony from the physicians, the commissioner of the department of children and families shall file the application for a temporary custody order together with a neglect or uncared for petition on the next business day following the granting of such order.

COMMENTARY: Revisions clarify the procedure. Notice to the Chief Child Protection Attorney is appropriate based upon new statutory framework.

APPENDIX E (11-15-07 Mins)

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

Sec.

NEW – Exclusion of Unnecessary Persons from the Courtroom

35a-1. [Adjudicatory Hearing; Actions by Judicial Authority] Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere

NEW 35a-1A. Record of the Case

35a-2. Case Status Conference or Judicial Pretrial

35a-3. Coterminous Petitions

35a-4. Intervening Parties

35a-5.[Foster Parents' and Siblings' Right to Be Heard] Notice and Right to be Heard

35a-6. Post-Disposition Role of Former Guardian

35a-7. Evidence

35a-8. Burden of Proceeding

35a-9. Dispositional Hearing; Evidence and Social Study

35a-10. Availability of Social Study to Counsel and Parties

35a-11. Dispositional Plan Offered by Respondents

35a-12. Protective Supervision—Conditions and Modification

35a-13. Findings as to Continuation in the Home, Efforts to Prevent Removal

35a-14. Motions for Review of Permanency Plan [and to Maintain or Revoke the Commitment]

35a-15. Reunification Efforts—Aggravating Factors

35a-16. Modifications

[35a-17. Motions to Review Plan for Child Whose Parents' Rights Have Been Terminated]

35a-[18.]17. Opening Default

35a19.]18. Transfer from Probate Court of Petitions for Removal of Parent as Guardian or Termination of Parental Rights

35a-[20.]19. [~~Petitions~~] Motions for Reinstatement of Parent as Guardian or Modification of Guardianship Post-disposition

35a-[21.]20. Appeals

NEW. Exclusion of Unnecessary Persons from Courtroom

Any judicial authority hearing a child protection matter may, during such hearing, exclude from the room in which such hearing is held any person whose presence is, in the opinion of the judicial authority, not necessary.

COMMENTARY: This proposed new section reflects General Statutes § 46b-122.

Sec. 35a-1. [Adjudicatory Hearing; Actions by Judicial Authority] Adjudication upon Acceptance of Admission or Written Plea of Nolo Contendere

[(a) The judicial authority shall first determine whether all necessary parties are present and that the rules governing service for nonappearing parties have been complied with, and shall note these facts for the record. The judicial authority shall then inform the unrepresented parties of the substance of the petition.]

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

[(c)] [A] An admission to allegations or a written plea of nolo contendere signed by the respondent may be accepted by the judicial authority. Before accepting an admission or plea of nolo contendere, the judicial authority shall determine whether the right to counsel has been waived, and that the parties understand the content and consequences of their admission or plea. If the allegations are admitted or the plea accepted, the judicial authority shall make its adjudicatory finding as to the validity of the facts alleged in the petition and may proceed to a dispositional hearing.

[(d) A verbatim stenographic or electronic recording of all hearings shall be kept, any transcript of which shall be part of the record of the case.]

COMMENTARY: Paragraph (a) - The substance of this paragraph appears in Section 33a-7(2), therefore, this section is unnecessary. Paragraph (b) - The substance of this paragraph appears in Section 33a-7(7), therefore, it is unnecessary. Paragraph (c) - Revisions to this paragraph clarify that in lieu of taking evidence in the adjudicatory phase, the defendant may admit to allegations in the petition by an admission or a written plea of nolo contendere. Paragraph (d) - This subparagraph has been moved to new rule 35a-1A.

New Sec. 35a-1A. Record of the Case

A verbatim stenographic or electronic recording of all hearings shall be kept, any transcript of which shall be part of the record of the case.

Sec. 35a-2. Case Status Conference or Judicial Pretrial

(a) When the allegations of the petition are denied, necessitating testimony in support of the petitioner's allegations, the case shall be continued for a case status conference and/or a judicial pretrial. The case status conference or judicial pretrial may be waived by the judicial authority upon request of all the parties.

(b) Parties with decision-making authority to settle must be present or immediately accessible during a case status conference or judicial pretrial. Continuances will be granted only in accordance with Section 34a-5.

(c) At the case status conference and/or judicial pretrial, all attorneys and pro se parties will be prepared to discuss the following matters:

- (1) Settlement;

(2) Simplification and narrowing of the issues;

(3) Amendments to the pleadings;

~~[(4) Such other actions as may aid in the disposition of the case;]~~

~~[(5)]~~ (4) The setting of firm trial dates;

~~[(6)]~~ (5) Preliminary witness lists;

~~[(7)]~~ (6) Identification of necessary arrangements for trial including, but not limited to, application for writ of habeas corpus for incarcerated parties, transportation, interpreters, and special equipment[.];

(7) Such other actions as may aid in the disposition of the case.

(d) When necessary, the judicial authority may issue a trial management order including, but not limited to, an order fixing a date prior to trial by which all parties are to exchange proposed witness and exhibit lists and copies of proposed exhibits not previously exchanged. Failure to comply with this order may result in the imposition of sanctions as the ends of justice may require.

COMMENTARY: Clarification and use of proper term.

Sec. 35a-3. Coterminous Petitions

When coterminous petitions are filed, the judicial authority first determines by a fair preponderance of the evidence whether the child or youth is neglected, uncared for or dependent; if so, then the judicial authority determines whether statutory grounds exist to terminate parental rights by clear and convincing evidence; if so, then the judicial authority determines whether termination of parental rights is in the best interests of the child or youth by clear and convincing evidence. If the judicial authority determines that termination grounds do not exist

or termination of parental rights is not in the best interests of the child or youth, then the judicial authority may consider by a fair preponderance of the evidence any of the dispositional alternatives available under the neglect, uncared for or dependent petition.

COMMENTARY: Standardization of terms and clarification.

Sec. 35a-4. Intervening Parties

(a) In making a determination upon a motion to intervene by any grandparent of the child or youth, the judicial authority shall consider:

(1) the timeliness of the motion as judged by all the circumstances of the case;

(2) whether the [~~applicant~~] movant has a direct and immediate interest in the case.

(b) Other persons including, but not limited to, siblings may move to intervene in the dispositional phase of the [~~trial~~] case and the judicial authority may grant said motion if it determines that such intervention is in the best interest of the child or youth or in the interests of justice.

(c) In making a determination upon a motion to intervene by any other [~~applicant~~] person, the judicial authority shall consider:

(1) the timeliness of the motion as judged by all the circumstances of the case;

(2) whether the [~~applicant~~] movant has a direct and immediate interest in the case;

(3) whether the ~~[applicant's]~~ movant's interest is not adequately represented by existing parties;

(4) whether the intervention may cause delay in the proceedings or other prejudice to the existing parties;

(5) the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority.

(d) Upon the granting of such motion, such grandparent or other ~~[applicant]~~ person may appear by counsel or in person. Intervenors are responsible for obtaining their own counsel and are not entitled to ~~[appointment of counsel at state expense]~~ paid state representation by [the court] the Chief Child Protection Attorney.

COMMENTARY: Paragraph (c) - The use of the word "applicant" misleadingly implies application for counsel. Paragraph (d) - Pursuant to recent legislation, the Chief Child Protection Attorney (CCPA) is not authorized to provide counsel to intervenors unless the judicial authority determines that the interests of justice require that the CCPA provide representation to an intervenor. See General Statutes §§ 46b-123d, 46b-123e and 46b-136.

Sec. 35a-5. [Foster Parents' and Siblings' Right to Be Heard] Notice and Right to be Heard

(a) Any foster parent, prospective adoptive parent or relative caregiver ~~[has the]~~ shall be notified of and have a right to be heard in any proceeding held concerning [the placement or revocation of commitment of] a [foster] child or youth living with such foster parent, prospective adoptive parent or relative caregiver. The commissioner of the department of children and families shall provide written

notice of all court proceedings concerning any child or youth to any such foster parent, prospective adoptive parent or relative caregiver of such child or youth. Records of such notice shall be kept by the commissioner of the department of children and families and information about notice given in each case provided to the court.

(b) Upon motion of any sibling of any child or youth committed to the commissioner of the department of children and families pursuant to General Statutes § 46b-129, the sibling shall have the right to be heard concerning visitation with and placement of any such child or youth.

COMMENTARY: Paragraph (a) – Changes made to this paragraph are necessitated by Public Act 07-174, Sec. 3 and federal law. Paragraph (b) – standardization of terms.

Sec. 35a-6. Post-Disposition Role of Former Guardian

When a court of competent jurisdiction has ordered legal guardianship of a child or youth to a person other than the biological parents of the child or youth prior to the juvenile court proceeding, the juvenile court shall determine at the time of the commitment of the child or youth to the commissioner of the department of children and families whether good cause exists to allow said legal guardian to participate in future proceedings as a party and what, if any further actions the commissioner of the department of children and families and the guardian are required to take.

COMMENTARY: Standardization of terms.

Sec. 35a-7. Evidence

(a) In the adjudicatory phase, the judicial authority is limited to evidence of events preceding the filing of the petition or the latest amendment, except where the judicial authority must consider subsequent events as part of its determination as to the existence of a ground for termination of parental rights.

(b) In the discretion of the judicial authority, evidence on adjudication and disposition may be heard in a non-bifurcated hearing, provided disposition may not be considered until the adjudicatory phase has concluded.

Sec. 35a-8. Burden of Proceeding

(a) The petitioner shall be prepared to substantiate the allegations of the petition. [If a custodial parent respondent fails to appear, the judicial authority may default that parent,] All parties except the child or youth shall be present at trial unless excused for good cause shown. Failure of any party to appear in person may result in a default and evidence may be introduced and judgment rendered. [In the event of a coterminous hearing the judicial authority shall ensure that the parent are given adequate time to appear.]

(b) The clerk shall give notice by mail to the defaulted party and the party's attorney of the default and of any action taken by the judicial authority. The clerk shall note ~~[on the docket]~~ the date that such notice is given or mailed.

COMMENTARY: Paragraph (a) – The suggested changes regarding default emphasize the need for all parties, not just the custodial parent, to be present at trial. The last sentence is deleted because there is no statutory or caseflow distinction for the type of or time for notice required for coterminous petitions.

There is not a different notice standard for respondents to coterminous petitions.
Paragraph (b) – this information is recorded in the court file, not on the docket.

Sec. 35a-9. Dispositional Hearing; Evidence and Social Study

The judicial authority may admit into evidence any testimony relevant and material to the issue of the disposition, including events occurring through the close of the evidentiary hearing, but no disposition may be made by the judicial authority until any mandated social study has been submitted to the judicial authority. Said study shall be marked as an exhibit subject to the right of any party to be heard on a Motion in Limine requesting redactions and to require that the author, if available, appear for cross-examination.

COMMENTARY: The proposed revision makes clear that social studies may contain objectionable material that the opposing party should be able to challenge prior to admission into evidence. The revision reflects existing practice.

Sec. 35a-10. Availability of Social Study to Counsel and Parties

The mandated social study, update or any other written report or evaluation made available to the judicial authority shall be made available for inspection to all counsel of record and, in the absence of counsel, to the parties themselves before the scheduled case status conference, pretrial or hearing date. The mandated social study, updates, reports and records and any copies thereof made available in the discretion of the judicial authority, together with any notes, copies or abstractions thereof, shall be returned to the clerk immediately following the disposition unless

they may be required for subsequent proceedings. All persons who have access to such materials shall be responsible for preserving the confidentiality thereof.

Sec. 35a-11. Dispositional Plan Offered by Respondents

The respondents shall have the right to produce witnesses on behalf of any dispositional plan they may wish to offer.

Sec. 35a-12. Protective Supervision—Conditions and Modification

(a) When protective supervision is ordered, the judicial authority will set forth any conditions of said supervision including duration, specific steps and review dates. ~~[Parental noncompliance with the order of protective supervision shall be a ground for a motion to modify the disposition. Upon finding that the circumstances so warrant, the judicial authority on its own motion or acting on a motion of any party and after notice is given and hearing has been held, may modify a previously entered disposition of protective supervision in accordance with the applicable General Statutes.]~~

(b) A protective supervision order shall be scheduled for an in court review and reviewed by the judicial authority at least thirty days prior to its expiration. At said review, an updated social study shall be provided to the judicial authority.

(c) If an extension of protective supervision is being sought by the commissioner of the department of children and families or any other party in interest, including counsel for the minor child or youth, then a written motion for the same shall be filed not less than thirty days prior to such expiration. Such motion shall be heard either at the in court review of protective supervision if it is

held within thirty days of such expiration or at a hearing to be held within ten days after the filing of such motion. For good cause shown and under extenuating circumstances, such written motion may be filed in a period of less than thirty days prior to the expiration of the protective supervision and the same shall be docketed accordingly. The motion shall set forth the reason(s) for the extension of the protective supervision and the period of the extension being sought. If the judicial authority orders such extension of protective supervision, the extension order shall be reviewed by the judicial authority at least thirty days prior to its expiration.

(d) Parental or guardian noncompliance with the order of protective supervision shall be a ground for a motion to modify the disposition. Upon finding that the best interests of the child so warrant, the judicial authority on its own motion or acting on a motion of any party and after notice is given and hearing has been held, may modify a previously entered disposition of protective supervision in accordance with the applicable General Statutes.

COMMENTARY: It is suggested that this section be clarified by reformatting it into several paragraphs. The text deleted in paragraph (a) has been moved to paragraph (d). Paragraph (c) - Last line is recommended for clarity, in response to numerous inquiries since the adoption of the rule in 2003. Paragraph (d) – The reference to the guardian is based upon General Statutes § 46b-129(j).

Sec. 35a-13. Findings as to Continuation in the Home, Efforts to Prevent Removal

Whenever the judicial authority orders a child or youth to be removed from the home, the judicial authority shall make written findings: (1) at the time of the order that continuation in the home is contrary to the welfare of the child or youth;

and (2) at the time of the order or within sixty days ~~[thereafter]~~ after the child or youth has been removed from the home, whether the commissioner of the department of children and families has made reasonable efforts to prevent removal or whether such efforts were not possible.

COMMENTARY: Standardization of terms and clarification. ASFA requires that the prevent removal finding be made within 60 days of the removal of the child from the home. Sometimes the removal takes place at the 96 hour hold which is before the judicial order.

Sec. 35a-14. Motions for Review of Permanency Plan [and to Maintain or Revoke the Commitment]

(a) Motions for review of the permanency plan ~~[and to maintain or revoke the commitment]~~ shall be filed nine months after the placement of the child or youth in the custody of the commissioner of the department of children and families pursuant to a voluntary placement agreement, or removal of a child or youth pursuant to General Statutes § 17a-101g or an order of a court of competent jurisdiction whichever is earlier. At the date custody is vested by order of a court of competent jurisdiction, or if no order of temporary custody is issued, at the date when commitment is ordered, the judicial authority shall set a date by which the subsequent motion for review of the permanency plan. ~~[and to maintain or revoke the commitment]~~ shall be filed. The commissioner of the department of children and families shall propose a permanency plan that conforms to the statutory requirements and shall provide a social study to support said plan, including information indicating what steps the commissioner has taken to implement it.

Nothing in this section shall preclude any party from filing a motion for revocation of commitment separate from a motion for review of permanency plan [and to maintain or revoke the commitment] pursuant to General Statutes § 46b-129(m) and subject to subsection (d) and [(c)] of this rule.

(b) Once a motion for review of the permanency plan [and to maintain or revoke the commitment] has been filed, the clerk of the court shall set a hearing [within] not later than ninety days thereafter. The court shall provide notice to the child or youth, and the parent or guardian of such child or youth and any other party found entitled to such notice of the time and place of the court hearing on any such motion not less than fourteen days prior to such hearing. Any party who is in opposition to [a] any such motion shall file a written objection and state the reasons therefore within thirty days after the filing of the commissioner[’s] of the department of children and families’ motion for review of permanency plan [or a motion for revocation of commitment which] and the objection shall be considered at the hearing. The court shall hold an evidentiary hearing in connection with any contested motion for review of the permanency plan. If there is no objection or motion for revocation filed, then the motion [or motions shall] may be granted by the judicial authority at the date of said hearing.

(c) Whether to [maintain] approve the permanency plan [or revoke the commitment] is a dispositional question, based on the prior adjudication, and the judicial authority shall determine whether it is in the best interestss of the child or youth to [maintain] approve the permanency plan [or revoke] upon a fair preponderance of the evidence. [The party seeking to maintain the commitment has the burden of proof that it is in the best interests of the child or youth to maintain

the commitment.] The commissioner of the department of children and families shall have the burden of proving that the proposed permanency plan is in the best interests of the child or youth.

(d) A party may file a motion seeking revocation of commitment. The judicial authority may revoke commitment if a cause for commitment no longer exists and it is in the best interests of the child or youth. Whether to revoke the commitment is a dispositional question, based on the prior adjudication, and the judicial authority shall determine whether to revoke the commitment upon a fair preponderance of the evidence. The party seeking revocation of commitment has the burden of proof that no cause for commitment exists. If the burden is met, the party opposing the revocation has the burden of proof that revocation would not be in the best interests of the child. If a motion for revocation is denied, a new motion shall not be filed by the movant until at least six months has elapsed from the date of the filing of the prior motion unless waived by the judicial authority.

[(d)] (e) [The commissioner of the department of children and families shall propose a permanency plan that conforms to the statutory requirements and shall provide a social study to support said plan, including information indicating what steps the commissioner has taken to implement it.] At [the] each hearing on [the] a motion for review of permanency plan, the judicial authority shall [determine whether efforts to reunify the child with the parent have been made, whether such efforts are still appropriate, and whether the commissioner has made reasonable efforts to achieve the permanency plan for the child.] review the status of the child, the progress being made to implement the permanency plan, determine a timetable for attaining the permanency plan, determine the services to be provided to the

parent if the court approves a permanency plan of reunification and the timetable for such services, and determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan.

The judicial authority shall also determine whether the proposed goal of the permanency plan as set forth in General Statutes § 46b-129(k)(2) is in the best interests of the child or youth by a fair preponderance of the evidence, taking into consideration the child's or youth's need for permanency. The child's or youth's health and safety shall be of paramount concern in formulating such plan. If a permanency plan is not approved by the judicial authority, it shall order the filing of a revised plan and set a hearing to review said revised plan within sixty days.

[(e) If the judicial authority determines at the hearing on the motion for review of permanency plan and to maintain or revoke the commitment that further efforts to reunify the child with the parent are appropriate, the judicial authority shall provide the parent with specific steps the parent shall take to address problems preventing reunification. Six months after such hearing, the judicial authority shall hold another hearing to assess the parent's progress. If the judicial authority finds that the parent has failed to make sustained and significant progress, the judicial authority shall redetermine whether further reunification efforts are appropriate. If the judicial authority determines efforts are not appropriate, it shall order the filing of a revised permanency plan and set a hearing to review said revised plan.]

(f) As long as a child or youth remains in the custody of the commissioner of the department of children and families, the commissioner shall file a motion for review of permanency plan [and to maintain or revoke commitment] nine months

after the prior permanency plan hearing. No later than twelve months after the prior [approval of a] permanency plan hearing, the judicial authority shall hold a subsequent permanency review hearing in accordance with subsection (d)[,]. [unless such child has been adopted, returned home or guardianship of the child has been transferred pursuant to an order of the judicial authority.]

[(g) A determination that further efforts to reunify the child with the parent are not appropriate need not be made at subsequent permanency review hearings if the judicial authority has previously determined that such efforts are not appropriate. A determination as to whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan must be made at each hearing on the motion for review of permanency plan.]

[(h)] (g) Whenever an approved permanency plan needs revision, the commissioner of the department of children and families shall file a motion for review of the revised permanency plan. The commissioner [is] shall not be precluded from initiating a proceeding in the best interestss of the child or youth considering the needs for safety and permanency.

(h) Where a petition for termination of parental rights is granted, the guardian or statutory parent of the child or youth or statutory parent shall report to the judicial authority [~~within~~] not later than thirty days [~~of~~] after the date the judgment is entered on a permanency plan and on the status of the child or youth. At least every three months thereafter, such guardian or statutory parent shall make a report to the judicial authority on the implementation of the plan, or earlier if the plan changes before the elapse of three months. The judicial authority may convene a hearing upon the filing of a report and shall convene and conduct a permanency [A]

hearing [~~shall be held before the judicial authority~~] for the purpose of reviewing the permanency plan for the child no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held in accordance with General Statutes § 46b-129(k), whichever is earlier, and at least once a year thereafter [~~until such time as a proposed adoption or transfer of guardianship is finalized.~~] while the child or youth remains in the custody of the commissioner of the department of children and families. At each court hearing, the judicial authority [~~will~~] shall make factual findings whether or not reasonable efforts to achieve the permanency plan or promote adoption have been made.

COMMENTARY: Paragraph (a) - Proposed changes to this section are necessitated by General Statutes § 46b-129(k)(1) as amended by Public Act 06-102. The complete, underlined sentence was moved from practice book section 35a-14(d).

Paragraph (b) - Changes are necessitated by General Statutes § 46b-129(k)(1) as amended by Public Act 06-102. Two complete underlined sentences taken from General Statutes § 46b-129(k)(1).

Paragraph (c) –Changes are necessitated by General Statutes §§ 46b-129(k)(3) and (m) as amended by Public Act 06-102. For clarity, the provisions addressing the motion to revoke a commitment have been moved to new paragraph (d).

New Paragraph (d) – For clarity, it is recommended that revocations be addressed in a separate paragraph. The provisions addressing a motion for revocation in paragraphs (b) and (c) have been placed in this new paragraph (d).

Paragraph (e) - Changes are necessitated by General Statutes § 46b-129(k)(3) as amended by Public Act 06-102.

Old Paragraph (e) – This paragraph has been deleted as the statutory provision upon which it is based no longer exists.

Paragraph (f) – Changes are necessitated by General Statutes § 46b-129 as amended by Public Act 06-102. Standardization of terms.

Paragraph (g) – This paragraph has been deleted in its entirety and its substance is in paragraph (e).

Old Paragraph (h) / New (g) - Changes are necessitated by General Statutes § 46b-129 as amended by Public Act 06-102.

New Paragraph (h) – The substance of this paragraph has been moved from Sec. 35a-17 with revisions necessitated by Public Act 06-102, section 8, which amended General Statutes § 17a-112(o).

Sec. 35a-15. Reunification Efforts—Aggravating Factors

Whenever the commissioner of the department of children and families seeks a finding of the existence of an aggravating factor negating the requirement that reasonable efforts be made to reunify a child or youth with a parent, the commissioner of the department of children and families shall, file a [~~petition, or~~] motion [if a case is already pending,] requesting such finding and the judicial authority shall proceed in accordance with General Statutes § 17a-111b(b).

COMMENTARY: Standardization of terms and Public Act 06-102.

Sec. 35a-16. Modifications

Motions to modify dispositions are dispositional in nature based on the prior adjudication and the judicial authority shall determine whether a modification is in the best interests of the child or youth upon a fair preponderance of the evidence. Unless filed by the commissioner of the department of children and families, any modification motion to return [~~the~~] a child or youth who has been committed to the care and custody of the commissioner of the department of children and families to the custody of the parent without protective supervision shall be treated as a motion for revocation of commitment.

COMMENTARY: Standardization and clarification of terms.

[Sec. 35a-17. Motions to Review Plan for Child Whose Parents' Rights Have Been Terminated

Where a petition for termination of parental rights is granted, the guardian of the child or statutory parent shall report to the judicial authority within thirty days of the date judgment is entered on a permanency plan and on the status of the

child. At least every three months thereafter, such guardian or statutory parent shall make a report to the judicial authority on the implementation of the plan, or earlier if the plan changes before the elapse of three months. A hearing shall be held before the judicial authority for the purpose of reviewing the plan for the child no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held in accordance with General Statutes § 46b-129 (k), whichever is earlier, and at least once a year thereafter until such time as a proposed adoption or transfer of guardianship is finalized. At each court hearing, the judicial authority will make factual findings whether or not reasonable efforts to achieve permanency or promote adoption have been made.]

COMMENTARY: The substance of this section has been moved to Sec. 35a-14(h).

Sec. 35a-[18]17. Opening Default

Any order or decree entered through a default may be set aside within four months succeeding the date of such entry of the order or decree upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a defense in whole or in part existed at the time of the rendition of such order or of such decree, and that the party so defaulted 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, and shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the party failed to appear. The judicial authority shall order reasonable notice of the pendency of such motion to be given to all parties to the

action, and may enjoin enforcement of such order or decree until the decision upon such written motion, unless said action shall prejudice or place the child's or youth's health, safety or welfare in jeopardy. A hearing on said motion shall be held as a priority matter but no later than fifteen days after the same has been filed with the clerk [~~of the juvenile court~~], unless otherwise agreed to by the parties and sanctioned by the judicial authority. In the event that said motion is granted the matter shall be scheduled for an immediate pretrial or case status conference within fourteen days thereof, and failing a resolution at that time, then the matter shall be scheduled for a trial as expeditiously as possible.

COMMENTARY: Consistent and use of the term "clerk"- see sections 8, 10, and 14 in this chapter. In rule 18, a distinction must be made between SCJM clerk and Probate clerk, so those references will be more specific.

Sec. 35a-~~19~~18. Transfer from Probate Court of Petitions for Removal of Parent as Guardian or Termination of Parental Rights

(a) When a contested application for removal of parent as guardian or petition for termination of parental rights or application to commit a child or youth to a hospital for the mentally ill has been transferred from the court of probate to the superior court, the superior court clerk shall transmit to the probate court from which the transfer was made a copy of any orders or decrees thereafter rendered, including orders regarding reinstatement pursuant to General Statutes § 45a-611 and visitation pursuant to General Statutes § 45a-612, and a copy of any appeal of a superior court decision in the matter.

(b) The date of receipt by the superior court of a transferred petition shall be the filing date for determining initial hearing dates in the superior court. The date of receipt by the superior court of any court of probate issued ex parte order of temporary custody not heard by that court shall be the issuance date in the superior court.

(c) ~~[(1)]~~ Any appearance filed for any party in the court of probate shall continue in the superior court until withdrawn or replaced.

(d)(1)The superior court clerk shall notify appearing parties in applications for removal of guardian by mail of the date of the initial hearing which shall be held not more than thirty days from the date of receipt of the transferred application. Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for removal of guardian, and an advisement of rights notice to be served on any non-appearing party or any party not served within the last twelve months with an accompanying order of notice and summons to appear at an initial hearing.

(2) Not less than ten days before the date of the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for termination of parental rights, and an advisement of rights notice to be served on all parties, regardless of prior service, with an accompanying order of notice and summons to appear at an initial hearing ~~[not less than ten days before the date of the hearing]~~ which shall be held not more than thirty days from the date of receipt of the transferred petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(3) The superior court clerk shall mail notice of the initial hearing date for all transferred petitions to all counsel of record and to the commissioner of the department of children and families or to any other agency which has been ordered by the probate court to conduct an investigation pursuant to General Statutes § 45a-619. The commissioner of the department of children and families or any other investigating agency will be notified of the need to have a representative present at the initial hearing.

COMMENTARY: It is suggested that this rule be clarified by reformatting paragraph (c) into several new sections. Paragraph (d)(1) is based upon §45a-609(a). Paragraph (d)(2) changes are based upon Public Act 04-128 amendments to C.G.S. Secs. 17a-112(i)(j) and 45a-716(a).

Sec. 35a-[20]19. [~~Petitions~~] Motions for Reinstatement of Parent as Guardian or Modification of Guardianship Post-disposition

(a) Whenever a parent or legal guardian whose guardianship rights to a child or youth were removed and transferred to another person by the superior court for juvenile matters seeks reinstatement as that child's or youth's guardian, or modification of guardianship post-disposition, the parent or legal guardian may file a [~~petition~~] motion with the court that ordered the transfer of guardianship.

(b) A parent, legal guardian or other interested party seeking guardianship of the child or youth after guardianship rights to that child or youth were transferred to another person by the superior court for juvenile matters may file a motion with the court that ordered the transfer of guardianship.

(c) The clerk ~~[of the court]~~ shall assign such [petition] motion a hearing date and issue a summons to the current guardian and the nonmoving parent or parents. The [petitioner] moving party shall cause a copy of such [petition] motion and summons to be served on the child's or youth's current legal guardian(s) and the nonmoving parent or parents.

(d) Before acting on such [petition] motion the judicial authority shall determine if the court still has custody jurisdiction and shall request, if necessary, that the commissioner of the department of children and families conduct an investigation and submit written findings and recommendations before rendering a decision.

COMMENTARY: The scope of this rule requires alteration. Situations arise where parties ask the court to address guardianship post-disposition. For example: mother initially has guardianship of the child; DCF then files a neglect petition listing mother and father as respondents; the court enters transfer of guardianship to grandmother at the disposition. Post-disposition, the father wants to file a petition for guardianship. This would not be considered a reinstatement, but a modification of guardianship. Such filings are generally permitted.

Also, since statutorily and by rules there has been a gradual shift from petitions to motions in addressing post disposition matters it is recommended that the rule reflect this shift in practice.

Sec. 35a-[21]20. Appeals

(a) Appeals from final judgments or decisions of the superior court in juvenile matters shall be taken within twenty days from the issuance of notice of the

rendition of the judgment or decision from which the appeal is taken in the manner provided by the rules of appellate procedure.

(b) If an indigent party wishes to appeal a final decision and if the trial counsel declines to represent the party because in counsel's professional opinion the appeal lacks merit, counsel shall file a timely motion to withdraw and to extend time in which to take an appeal. The judicial authority shall then forthwith notify the Chief Child Protection Attorney to [appoint] assign another attorney to review this record who, if willing to represent the party on appeal, will be ~~[appointed]~~ assigned by the Chief Child Protection Attorney for this purpose. If the second attorney determines~~[d]~~ that there is no merit to an appeal, that attorney shall make this known to the judicial authority and the Chief Child Protection Attorney at the earliest possible moment, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal in which to secure counsel who, if qualified, may ~~[be appointed]~~ file an appearance to represent the party on the appeal.

(c) The time to take an appeal shall not be extended past forty days from the date of the issuance of notice of the rendition of the judgment or decision.

COMMENTARY: Clarification and PA 07-159.