

Minutes of the Meeting
Rules Committee
January 24, 2011

On Monday, January 24, 2011, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 3:50 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. BARBARA N. BELLIS
HON. JULIETT L. CRAWFORD
HON. RICHARD W. DYER
HON. LESLIE I. OLEAR
HON. MAUREEN M. KEEGAN
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

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

1. The Committee unanimously approved the minutes of the December 20, 2010, meeting.

2. The Committee considered proposed revisions to the camera rules submitted by Judge Barbara M. Quinn, Chief Court Administrator, on behalf of the Judicial Media Committee.

After discussion, the Rules Committee asked the undersigned to draft revisions to Section 1-11A, which concerns media coverage of arraignments, so that it incorporates provisions of a standing order issued by Judge Dyer concerning these matters. Judge Dyer has had numerous arraignments in which he allowed electronic coverage and his standing order reflects the protocol he established in these matters.

3. The Committee considered proposals submitted by Judge Quinn on behalf of the Civil Commission to amend the discovery rules concerning electronically stored information.

After discussion, the Committee made revisions to the proposals and unanimously voted to submit to public hearing the proposed revisions to Sections 13-1, 13-2, 13-5, 13-9 and 13-14,

and proposed new Section 13-33 as set forth in Appendix A attached hereto.

4. At a prior meeting, the Committee considered a proposal submitted by the Connecticut Bar Examining Committee to amend Section 2-13 by adding a definition of the practice of law for purposes of that rule and asked Attorney Kathleen Wood, Administrative Director of the Bar Examining Committee, to report to the Rules Committee how other states define the practice of law in this context.

At this meeting the Committee considered Attorney Wood's report.

After discussion, the Committee unanimously voted to submit to public hearing a proposed new subsection (b) of Section 2-13 as set forth in Appendix B attached hereto.

5. The Committee considered proposals by Attorney Joanne S. Faulkner to amend the rules regarding pro se filings.

After discussion, the Committee referred these proposals to the Self-Represented Parties Committee for whatever action it deems appropriate.

6. The Committee considered proposals submitted by Judge Linda Lager, Chief Administrative Judge for Civil Matters, on behalf of the Civil Commission to amend the discovery rules.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Sections 13-7, 13-8, 13-10 and 13-30 as set forth in Appendix C attached hereto.

7. The Committee considered an email from Attorney Joseph Del Ciampo advising them that on July 1, 2011, the terms on the Legal Specialization Screening Committee (LSSC) of Attorney Salvatore C. DiPiano (Chair), Attorney Francis J. Brady, and Attorney Jeffrey N. Low, will expire. Rule 7.4B(a) of the Rules of Professional Conduct provides that the Chief Justice, upon recommendation of the Rules Committee, shall appoint members of the bar of this state to the LSSC.

After discussion, the Committee agreed that if Attorneys DiPiano, Brady, and Low are willing to serve another term, the Committee would recommend their reappointment to the Chief Justice. The Committee asked that Attorney Del Ciampo find out from them if they would like another term on the LSSC.

8. The Committee considered a proposal by Judge Robert J. Devlin, Jr., Chief Administrative Judge of the Criminal Division, to amend the rules to provide more protection of

juror privacy.

After discussion, the Committee requested Judge Keegan to ask Judge Devlin to provide more information concerning his request. Judge Keegan will report back to the Committee at its next meeting.

9. The Rules Committee rescheduled its March 28, 2011, meeting to March 21, 2011.

10. Judge Olear reported concerning agenda item 3-5 from the November Rules Committee meeting regarding the report of the ABA Standing Committee on Judicial Independence to the House of Delegates, concerning its recommendations for improving judicial disqualification practices and procedures among the states. Judge Olear reported that the subcommittee that was created at the November meeting to review this matter met and, after considering the issue in light of facts unique to the State of Connecticut, recommends that the current rules not be changed.

After consideration, the Rules Committee unanimously voted to adopt the recommendation of the subcommittee.

Respectfully submitted,

A handwritten signature in black ink that reads "Carl E. Testo". The signature is written in a cursive style with a large, prominent "C" and "T".

Carl E. Testo
Counsel to the Rules Committee

Attachments

APPENDIX A (012411 mins)

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; (4) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;(5) "electronically stored information" means information that is stored in an electronic medium and is retrievable in perceivable form.

COMMENTARY: The newly added subsections (4) and (5) that set forth definitions of the terms "electronic" and "electronically stored information", respectively, were made in connection with the adoption of electronic discovery rules in Section 13-1 *et seq.* These definitions are based upon the Uniform Rules Relating to the Discovery of Electronically Stored Information ("Uniform ESI Rules") and Federal Civil Rule Amendments. The Uniform ESI Rules were drafted by the National Conference of Commissioners on Uniform State Laws and were approved and recommended for enactment in all states at its annual conference in 2007. The definition of "electronically stored information" is intended to encompass future developments in computer technology. The definitions are intended to be sufficiently broad to cover all types of computer-based information, and sufficiently flexible to encompass future technological changes and development.

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 and electronically stored information 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.

COMMENTARY: In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, the term “electronically stored information,” as defined in Section 13-1, has been added to the scope of discovery.

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;
- (9) specified terms and conditions relating to the discovery of electronically stored information including the allocation of expense of the discovery of electronically stored

information, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

COMMENTARY: In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, the drafters' designed subsection (9) to address the unique issues raised by the difficulties in locating, retrieving and providing discovery of electronically stored information. This new subsection is based upon a modified version of the considerations contained in Uniform ESI Rules 8 (c) and (d) (see Commentary to Section 13-1).

Under these new electronic discovery rules, a responding party should permit discovery of electronically stored information that is likely to lead to admissible evidence, is not privileged and is reasonably accessible. The decision whether to require the responding party to search for and produce information that is from sources that are not reasonably accessible depends not only on the burden and expense of doing so, but also on whether the burden and expense can be justified in the circumstances of one case. Appropriate considerations may include: (1) the specificity of the discovery request; (2) the quantity of information available from other and more easily accessed sources; (3) the failure to produce relevant information that seems likely to have existed but is no longer available from more easily accessed sources; (4) the likelihood of finding relevant responsive information that cannot be obtained from other, more easily accessed sources; (5) predictions as to the importance and usefulness of the further information; and (6) a party's willingness to voluntarily bear the cost of discovery. If the court orders discovery after these considerations, the court may allocate, in its discretion, the expense, in whole or in part, of discovery.

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 and

electronically stored information as provided in subsection (d)) 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, 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] information 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.] and if a request for production does not specify a form for producing a type of electronically stored information, the responding party shall produce the information in a form in which it is ordinarily maintained or in a form that is reasonably

usable. A party need not produce the same electronically stored information in more than one form.

(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.

COMMENTARY: The former subsection (d) has been virtually eliminated in light of the adoption of electronic discovery rules in Section 13-1 *et seq.* that now permit the discovery of electronically stored information that is likely to lead to admissible evidence, is not privileged and is reasonably accessible. The new language of subsection (d) is designed to more clearly address the form of production of electronically stored information. The form of production is more important to the exchange of electronically stored information than it is to the exchange of paper documents. The rule recognizes that electronically stored information may exist in multiple forms, and that different forms of production may be appropriate for different types of electronically stored information. The rules allows the requesting party to specify the form and allows the responding party to object, and creates a default rule for production if no form is specified.

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.

(d) The failure to comply as described in this section shall be excused and the judicial authority may not impose sanctions on a party for failure to provide information, including electronically stored information, lost as the result of the routine, good-faith operation of a system or process in the absence of a showing of intentional actions designed to avoid known preservation obligations.

COMMENTARY: Subsection (d) responds to a distinctive feature of electronic information systems, the routine modification, overwriting, and deletion of information that attends normal use. This rule applies to information lost due to the routine operation of an information system only if the system was operated in good-faith. Good faith may require that a party intervene to modify or suspend features of the routine operation of a computer system to prevent loss of information if that information is subject to a preservation obligation.

Subsection (d) is based on Uniform ESI Rule 5 (see Commentary to Section 13-1) and Federal Rules 37(f). It restricts the impositions of sanctions. It does not prevent a court from making the kinds of adjustments frequently used in managing discovery if a party is unable to provide relevant responsive information. For example, a court could order

the responding party to produce an additional witness for deposition, respond to additional interrogatories, or make similar attempts to provide substitutes or alternatives for some or all of the lost information. The revisions to this section are intended to apply to a party's failure to provide any type of information, including electronically stored information. The revisions are added at this time due to the increase of electronically stored information. In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, this rule applies to all forms of discovery and is not limited to electronically restored information.

(NEW) Sec. 13-33. Claim of Privilege or Protection After Production

(a) If papers, books, documents or electronically stored information produced in discovery are subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(b) After being notified of a claim of privilege or of protection under subsection (a), a party shall immediately sequester the specified information and any copies it has and: (1) return or destroy the information and all copies and not use or disclose the information until the claim is resolved; or (2) present the information to the judicial authority under seal for a determination of the claim and not otherwise use or disclose the information until the claim is resolved.

(c) If a party that received notice under subsection (b) disclosed the information subject to the notice before being notified, the party shall take reasonable steps to retrieve the information.

COMMENTARY: This new rule is based upon Uniform ESI Rule 9 (see Commentary to Section 13-1). The risk of privilege waiver and the work necessary to avoid it add to the costs and delay of discovery. When the review is of electronically stored information, the risk of waiver and the time and effort to avoid it can increase substantially because of the volume of electronically stored information and the difficulty of ensuring that all information to be produced has in fact been reviewed. This new rule provides a procedure for a party to assert a claim of privilege or trial-preparation material protection after information is produced in discovery, and, if the claim is contested, permits any party that received the information to present the matter to the court for resolution. The rule does not address whether the privilege or protection that is asserted after production was

waived by the production or ethical implications of use of such data. These issues are left to resolution by other law or authority. This section is intended to apply to all inadvertent disclosures of privileged or protected materials and is added at this time due to the increase of electronically stored information. In connection with the adoption of electronic discovery rules in Section 13-1 *et seq.*, this rule applies to all forms of discovery and is not limited to electronically stored information.

Appendix B (012411 mins)

(The changes to this rule that were approved by the Rules Committee at the January 24, 2011, meeting are shown below by double-underlining and strikethroughs. The other changes in the rule that are shown by single-underlining and brackets are changes that were approved by the Rules Committee at its October meeting.)

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

(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the 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] state bar examining committee that he or she (1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility 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 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 jurisdictions for at least five of the [seven] ten years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood in such reciprocal jurisdiction for at least five of the [seven] ten years immediately preceding the date of the application and is in good standing, provided that such five years of practice shall have occurred subsequent to the applicant's last failed Connecticut examination; (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,] and/or to

supervise law students within a clinical law program at an accredited Connecticut law school while a member of the faculty of such school 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 fitness to practice law and supporting, to the satisfaction of the [standing committee on recommendations for admission to the bar] state bar examining committee, his or her practice of law as defined under (2) of this section; where applicable, an affidavit from the dean of the accredited Connecticut law school at which the applicant has accepted employment attesting to the employment relationship and term; affidavits from two members of the bar of Connecticut of at least five years' standing certifying that the applicant is of good moral character and is fit to practice law[, and 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.

(b) For the purpose of this rule, the "practice of law" shall include the following activities, if performed in a reciprocal jurisdiction after the date of the applicant's admission to that jurisdiction:

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

(2) service as a lawyer with a state, federal, or territorial agency, including military services; however, such service for a federal agency, including military service, need not be performed in a reciprocal jurisdiction;

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

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

(5) service as a judicial law clerk; or

(6) any combination of the above.

~~(b)~~ (c) An attorney who, within the [7] ten years immediately preceding the date of application, was engaged in the supervision of law students within a clinical law program of one or more accredited law schools in another jurisdiction or jurisdictions while a member of the faculty of such school or schools, whether or not any such jurisdiction is a reciprocal jurisdiction, may apply such time toward the satisfaction of the requirement of subdivision (a) (2) (A) of this section. If such time is so applied, the attorney shall file with his or her application an affidavit from the dean of the law school or schools of each such other jurisdiction attesting to the employment relationship and the period of time the applicant engaged in the supervision of law students within a clinical program at such school. [An attorney so engaged for 5 of the 7 years immediately preceding the date of application will be deemed to satisfy the threshold requirement of subdivision (a) (2) of this section if such attorney is duly licensed to practice law before the highest court of any state or territory of the United States or in the District of Columbia whether or not such jurisdiction is reciprocal to Connecticut.]

COMMENTARY: New (b) above provides a definition of the practice of law that is consistent with ABA recommendations and the term as defined in other jurisdictions.

APPENDIX C (012411 mins)

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

(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.] A party objecting to one or more interrogatories shall file an objection in accordance with Section 13-8.

(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.

COMMENTARY: The current rules of practice require a party objecting to interrogatories to file a cover sheet, setting forth the interrogatory to which the filer objects and the reasons for the objection. In practice, the cover sheet is filed together with a document titled Objection to Request for Interrogatories, which repeats the same information as is already contained in the cover sheet, but also include an proposed order and certification. The current requirement for filing a separate cover sheet requires duplication on the part of the person objecting to an interrogatory. The proposed revision deletes the reference in this section to a cover sheet and provides that objections be filed in accordance with Sec. 13-8.

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 set forth reasons for the objection, shall be signed 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.

COMMENTARY: The revision to this section eliminates the reference to a cover sheet and adds the requirement that the objection set forth the reasons for the objection immediately preceded by the interrogatory to which the objection is made.

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

(a) The party to whom the request is directed or such party's attorney shall serve a written response, which may be in electronic format, within 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 productions 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 objects to one or more requests, in which case only the cover sheet shall be so filed.] A party objecting to one or more requests shall file an objection to the request. Objections to requests for production shall be immediately preceded by the request objected to, shall set forth reasons for the objection, shall be signed the attorney or pro se party making them and shall be filed with the court.

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 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.

COMMENTARY: The revisions to this section eliminate the reference to a cover sheet and add the requirement that the objection set forth the reasons for the objection immediately preceded by the production request to which the objection is made.

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 the 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. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. 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 certifying that the deposition is a true record of the deponent's testimony, 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 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 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] bear the cost of the original transcript, and any permanent electronic record including audio or video tape. Any party or the deponent may obtain a copy of the

deposition transcript and [any] permanent electronic record including audio or video tape [to each adverse party] at its own expense.

COMMENTARY: The current rule provides that 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. The federal courts and the majority of states have rules requiring adverse parties to pay for their own deposition copies. In cases with multiple parties, the cost of providing these copies can be prohibitive. This proposed revision would make Connecticut practice consistent with that of the federal courts and the majority of the states by requiring any other party or deponent to pay for his or her own copy of the deposition or any permanent electronic record.