

Minutes of the Meeting
Rules Committee
February 28, 2011

On Monday, February 28, 2011, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 3:41 p.m.

Members in attendance were:

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

The Honorable Juliett L. Crawford was not in attendance at this meeting.

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

1. The Committee unanimously approved the minutes of the January 24, 2011, meeting.
2. At its meeting on January 24, 2011, 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 and asked the undersigned to draft further revisions to Section 1-11A, which concerns media coverage of arraignments and to submit the draft to the Committee for consideration at its next meeting.

At this meeting, the Committee voted, with Judge Taylor opposed, to submit to public hearing the proposed revisions to Section 1-11A as set forth in Appendix A attached hereto.

3. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler on behalf of the Statewide Grievance Committee to amend Section 2-27 concerning the attorney registration process.

After discussion, the Committee made further revisions to the proposal and unanimously voted to submit to public hearing the proposed revision to Section 2-27 as set forth in Appendix B attached hereto.

4. The Committee considered a proposal submitted by Attorney Michael Bowler on behalf of the Statewide Grievance Committee to amend Rule 7.2 of the Rules of Professional Conduct concerning attorney advertising.

After discussion, the Committee tabled this matter to its March meeting and will invite Attorney Bowler to be present at that meeting.

5. The Committee considered a proposal by Attorney Michael H. Agranoff to add a procedure for motion for summary judgment to the juvenile rules and comments from Judge Christine E. Keller, Chief Administrative Judge for Juvenile Matters, concerning the proposal.

After discussion, the Committee unanimously voted to deny the proposal.

6. The Committee considered a proposal by Judge Howard T. Owens, Jr., to amend the rules concerning articulation.

After discussion, the Committee referred this proposal to the Appellate Advisory Committee for any action it deems appropriate.

7. At its last meeting, 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. At that meeting, 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.

At this meeting, Attorney Del Ciampo reported that all three are willing to serve another term.

The Committee thereupon agreed to recommend to the Chief Justice that Attorneys DiPiano, (who the Rules Committee designated to continue as Chair), Brady and Low be reappointed to another term on the LSSC.

8. At its last meeting, 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. At that meeting the Committee requested Judge Keegan to ask Judge

Devlin to provide more information concerning his request and to report back to the Committee at its next meeting.

At this meeting, Judge Keegan reported that Judge Devlin suggests that United States District Court District of Connecticut Local Rule of Civil Procedure 83.5 (1) (d) and (4) be added to Practice Book Section 42-8.

After discussion, the Committee asked the undersigned to draft a revision to Section 42-8 that incorporates the above and to submit it to the Committee for consideration at its next meeting.

9. The Committee considered a proposal by Judge Bellis to adopt as Practice Book forms standard asbestos interrogatories and requests for production.

After discussion, it was agreed that Judge Bellis has authority pursuant to Section 23-14 to issue an order that these standard discovery forms be used and that there is no need to add them to the Practice Book.

10. The Committee considered proposals submitted by Judge Keller on behalf of the Juvenile Task Force to amend the juvenile rules.

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

11. The Committee considered a proposal by Attorney Daniel B. Horwitch to amend Section 11-18 concerning the procedure for requesting argument on a motion not arguable as a matter of right.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 11-18 as set forth in Appendix D attached hereto.

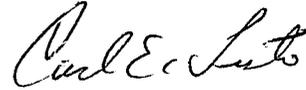
12. The Committee considered a proposal by Attorney Horwitch to amend Section 24-29 of the small claims rules.

After discussion, the Committee made a minor amendment to the proposal and unanimously voted to submit to public hearing the proposed revision to Section 24-29, as set forth in Appendix E attached hereto.

13. The Committee considered proposals by the Chief Disciplinary Counsel's Office to amend the attorney grievance rules. First Assistant Disciplinary Counsel Patricia King was present at the meeting and answered questions from the Committee concerning the proposals.

After discussion, the Committee asked Attorney King to revise the proposals and resubmit them to the Committee for consideration at a future meeting.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carl E. Testo".

Carl E. Testo
Counsel to the Rules Committee

Attachments

APPENDIX A (2-28-11 mins)

Sec. 1-11A. Media Coverage of Arraignments

(a) The broadcasting, televising, recording, or taking photographs by media in the courtroom during arraignments may be authorized by the judicial authority presiding over such arraignments in the manner set forth in this section, as implemented by the judicial authority. [The judicial authority shall articulate the reasons for its decision on a request for electronic coverage of an arraignment and such decision shall be final. The judicial authority in its discretion may require pooling arrangements by the media.]

(b) Any media representative desiring to broadcast, televise, record or photograph an arraignment shall file a written request for electronic coverage with the clerk of court where the arraignment is scheduled to take place. The judicial authority shall establish a time frame within which such requests shall be filed. The clerk shall promptly transmit any such request to the arraignment judge, the supervising marshal, the state's attorney and the attorney for the defendant or, where the defendant is unrepresented, to the defendant. Electronic coverage shall not be permitted until the state's attorney and the attorney for the defendant, or the defendant if he or she has no attorney, have had an opportunity to object to the request on the record and the judicial authority has ruled on the objection. The judicial authority shall articulate orally or in writing the reasons for its decision on the request and such decision shall be final.

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

(1) any person other than court personnel or other participants in the arraignment for which electronic coverage is permitted;

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

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

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

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

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

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

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

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

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

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

(h) If there are multiple requests to broadcast, televise, record or photograph the same arraignment, the media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the judicial authority.

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

APPENDIX B (022811 mins)

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

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct, each lawyer or law firm shall maintain, separate from the lawyer's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the lawyer or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each lawyer or law firm maintaining one or more trust accounts as defined in Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the lawyer or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each lawyer or law firm shall retain the records required under this section for a period of seven years after final distribution of such funds or any portion thereof. Specifically, each lawyer or law firm shall maintain the following in connection with each such trust account:

(1) a receipt and disbursement journal identifying all deposits in and withdrawals from the account and showing the running account balance;

(2) a separate accounting page or column for each client or third person for whom funds are held showing (A) all receipts and disbursements and (B) a running account balance;

(3) at least quarterly, a written reconciliation of trust account journals, client ledgers and bank statements;

(4) a list identifying all trust accounts as defined in Section 2-28 (b); and

(5) all checkbooks, bank statements, and canceled or voided checks.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to subsection (b) of this section, shall be made available upon request of the statewide grievance committee or its counsel, or the disciplinary counsel for review, examination or audit upon receipt of notice by the statewide grievance committee of an overdraft notice as provided by Section 2-28 (f). Upon the filing of a grievance complaint or a finding of probable cause, such records shall be made available upon request of the statewide grievance committee, its counsel or the disciplinary counsel for review or audit.

(d) Each lawyer shall register with the statewide grievance committee, on a form

devised by the committee, the address of the lawyer's office or offices maintained for the practice of law, the lawyer's office e-mail address and business telephone number, the name and address of every financial institution with which the lawyer maintains any account in which the funds of more than one client are kept and the identification number of any such account[, and any other information requested on such form]. Such registrations will be made on an annual basis and at such time as the lawyer changes his or her address or addresses or location or identification number of any such trust account in which the funds of more than one client are kept. The registration forms filed pursuant to this subsection and pursuant to Section 2-26 shall not be public; however, all information obtained by the statewide grievance committee from these forms shall be public, except the following: trust account identification numbers; the lawyer's home address; the lawyer's office e-mail address; and the lawyer's birth date. Unless otherwise ordered by the court, all non-public information obtained from these forms shall be available only to the statewide grievance committee and its counsel, the reviewing committees, the grievance panels and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee and its counsel, a judge of the superior court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the lawyer, to any other person. The registration requirements of this subsection shall not apply to judges of the supreme, appellate or superior courts, judge trial referees, family support magistrates, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges.

(e) The statewide grievance committee or its counsel may conduct random inspections and audits of accounts maintained pursuant to subsection (b) of this section to determine whether such accounts are in compliance with this section and Rule 1.15 of the Rules of Professional Conduct. If any random inspection or audit performed under this subsection discloses an apparent violation of this section or the Rules of Professional Conduct, the matter may be referred to a grievance panel for further investigation or to the disciplinary counsel for presentment to the superior court. Any lawyer whose accounts are selected for inspection or audit under this section shall fully cooperate with the inspection or audit, which cooperation shall not be construed to be a violation of Rule 1.6 (a) of the

Rules of Professional Conduct. Any records, documents or information obtained or produced pursuant to a random inspection or audit shall remain confidential unless and until a presentment is initiated by the disciplinary counsel alleging a violation of Rule 1.15 of the Rules of Professional Conduct or of this section, or probable cause is found by the grievance panel, the statewide grievance committee or a reviewing committee. Contemporaneously with the commencement of a presentment or the filing of a grievance complaint, notice shall be given in writing by the statewide grievance committee to any client or third person whose identity may be publicly disclosed through the disclosure of records obtained or produced in accordance with this subsection. Thereafter, public disclosure of such records shall be subject to the client or third person having thirty days from the issuance of the notice to seek a court order restricting publication of any such records disclosing confidential information. During the thirty day period, or the pendency of any such motion, any document filed with the court or as part of a grievance record shall refer to such clients or third persons by pseudonyms or with appropriate redactions, unless otherwise ordered by the court.

(f) Violation of this section shall constitute misconduct.

COMMENTARY: The above changes will assist the Statewide Grievance Committee in locating, identifying and communicating with members of the bar.

APPENDIX C (022811 mins)

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

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

(a) [(1) "Child" means any person under sixteen years of age, except that (A) for purposes of delinquency matters and proceedings, "child" means any person (i) under seventeen years of age who has not been legally emancipated or, (ii) seventeen years of age or older who, prior to attaining seventeen years of age, has committed a delinquent act and, subsequent to attaining seventeen years of age, (I) violates any order of a judicial authority or any condition of probation ordered by a judicial authority with respect to such delinquency proceeding; or (II) willfully fails to appear in response to a summons under General Statutes § 46b-133, with respect to such delinquency proceeding, and (B) for purposes of family with service needs matters and proceedings, child means a person under seventeen years of age; (2) "Youth" means any person sixteen or seventeen years of age who has not been legally emancipated; (3) "Youth in crisis" means any seventeen year old youth who, within the last two years, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode; (B) is beyond the control of the youth's parents, guardian or other custodian; or (C) has four unexcused absences from school in any one month or ten unexcused absences in any school year; (4)] The definitions of the terms "child," "youth," "youth in crisis," "abused," "mentally deficient," "delinquent," "delinquent act," "dependent," "neglected," "uncared for," "alcohol-dependent child," "family with service needs," "drug-dependent child," "serious juvenile offense," "serious juvenile offender," and "serious juvenile repeat offender" shall be as set forth in General Statutes § 46b-120. The definition of "victim" shall be as set forth in General Statutes § 46b-122. [(5) "Indian child" means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.]

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

children and families.

(c) "Complaint" means a written allegation or statement presented to the judicial authority that a child's or youth's conduct as a delinquent or situation as a child from a family with service needs or youth in crisis brings the child or youth within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

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

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

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

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

hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child or youth is uncared for, neglected, or dependent. A preliminary hearing on any ex parte custody order or order to appear shall be held not later than ten days from the issuance of the order. (5) "Plea hearing" is a hearing at which (i) A parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights admits, denies, or pleads nolo contendere to allegations contained in the petition; or (ii) a child or youth who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition, or a hearing at which a child or youth who is a named respondent in a family with service needs or youth in crisis petition admits or denies the allegations contained in the petition upon being advised of the allegations.

(h) "Indian child" means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.

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

[(i)] (j) "Parties" includes: (1) The child or youth who is the subject of a proceeding and those additional persons as defined herein; (2) "Legal party": Any person, including a parent, whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority's jurisdiction to adjudicate the matter pending before it; and (3) "Intervening party": Any person [whose interest in the matter before the judicial authority is not of such a nature and kind as to entitle legal

service or notice as a prerequisite to the judicial authority's jurisdiction to adjudicate the matter pending before it but whose participation therein, at the discretion of the judicial authority, may promote the interests of justice. An "intervening party" may in any proceeding before the judicial authority be given notice thereof in any manner reasonably appropriate to that end, but no such "intervening party" shall be entitled, as a matter of right, to provision of counsel by the court.] who is permitted to intervene in accordance with Section 35a-4.

[(j)] (k) "Permanency plan" means a plan developed by the commissioner of the department of children and families for the permanent placement of a child or youth in the commissioner's care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110 (b), 17a-111b (c), 46b-129 (k), 46b-141, and 46b-149(j).

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

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

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

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

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

[(p)] (q) "Staff secure facility" means a residential facility (1) that does not include

construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein, (2) that may establish reasonable rules restricting entrance to and egress from the facility, and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

[(q)] (r) "Supervision" includes: (1) "Nonjudicial supervision": A legal status without the filing of a petition or a court conviction or adjudication but following the child's admission to a complaint wherein a probation officer exercises supervision over the child with the consent of the child and the parent; (2) "Protective supervision": A disposition following adjudication in neglected, uncared for or dependent cases created by an order of the judicial authority requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child or youth when the child's or youth's place of abode remains with the parent or any suitable or worthy person, or when the judicial authority vests custody or guardianship in another suitable and worthy person, subject to the continuing jurisdiction of the court; and (3) "Judicial supervision": A legal status similar to probation for a child adjudicated to be from a family with service needs or subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or § 46b-133e.

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

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

COMMENTARY: The revision in subsections (a) clarifies that certain additional definitions are as set forth in General Statutes §§ 46b-120 and 46b-122 (Public Act 10-43, §30). The movement of subsection (h) is to maintain consistency within the section. The revision to subsection (j)(3) is consistent with proposed revisions to Section 35a-4 that conform to Sections 46b-129(c) and (d), as amended by Public Act 09-185.

Sec. 30-5. Detention Time Limitations

(a) No child shall be held in detention for more than twenty-four hours, excluding Saturdays, Sundays, and holidays, unless (1) a delinquency petition or information alleging delinquent conduct has been filed or an affidavit is filed by a police officer, probation officer or prosecutor setting forth the facts upon which they believe that a child in detention is a delinquent or non-delinquent child whose return is sought by another jurisdiction in accordance with the Interstate Compact on Juveniles, and (2) an order for such continued detention has been signed by the judicial authority.

(b) A hearing to determine probable cause and the need for further detention shall be held no later than the next business day following the arrest. However, a judicial finding of probable cause must be made within forty-eight hours of arrest, including Saturdays, Sundays and holidays. If there is no such finding of said probable cause within forty eight hours of the arrest, the child shall be released from detention subject to an information and subsequent arrest by warrant or take into custody order.

(c) If a non-delinquent child is being held for another jurisdiction in accordance with the Interstate Compact on Juveniles, that child shall be held not more than 90 days and shall be held in a secure facility, as defined by rules promulgated in accordance with the Compact, other than a locked, state-operated detention facility.

COMMENTARY: To comply with the provisions of the Interstate Compact on Juveniles and General Statutes § 46b-149(f). Regulations promulgated pursuant to the Compact at times require that the judicial authority hold a non-delinquent child whose custody is being sought by another state in a secure setting. Compact Rule 1-101 defines a secure facility as a facility approved for the holding of juveniles which is either staff-secured or locked and prohibits a juvenile in custody from leaving. General Statutes § 46b-149(f) prohibits the use of detention as a means by which to hold a non-delinquent child in accordance with the Compact.

Sec. 30-6. Basis for Detention

No child shall be held in detention unless it appears from the available facts that there is probable cause to believe that the child is responsible for the acts alleged, that there is no less restrictive alternative available and that there is (1) a strong probability that the child will run away prior to the court hearing or disposition, or (2) a strong probability

that the child will commit or attempt to commit other offenses injurious to the child or to the community [before] prior to the court disposition, or (3) probable cause to believe that the child's continued residence in the child's home pending disposition [will not safeguard the best interests of] poses a risk the child or the community because of the serious and dangerous nature of the act or acts [set forth in the attached delinquency petition or information,] the child is alleged to have committed, [or] (4) a need to hold the child for another jurisdiction, [or] (5) a need to hold the child to assure the child's appearance before the court, in view of [a] the child's previous failure to respond to the court process[.] ,or (6) the child has violated one or more of the conditions of a suspended detention order. The court in exercising its discretion to detain under General Statutes § 46b-133 (d) may consider a suspended detention order with graduated sanctions as an alternative to detention in accordance with graduated sanctions procedures established by the judicial branch.

COMMENTARY: The revisions to this section are made to conform to amendments made by Section 72(d) of Public Act 09-7 of the September Special Session.

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 or her 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 not later than ten days 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 respondents' position concerning the alleged facts; (iv) that the respondent has the right to remain silent; (v) that an attorney will be appointed for respondents who cannot afford an attorney by the chief child protection attorney; (vi) that such respondents may apply for 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 respondents have any questions concerning the case or appointment of counsel, any such respondent is advised to go to the court, or contact the clerk's office, or contact the chief child protection attorney as soon as possible, and (viii) that such parents, or a person having responsibility for the care and custody of the child or youth, may request the Commissioner of Children and Families to investigate placing the child or youth with a person related to the child or youth by blood or marriage who might serve as a licensed foster parent or temporary custodian for such child or youth.

(f) Upon application for state paid representation, the judicial authority shall promptly determine eligibility and, if the respondent is eligible, promptly 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 chief child protection attorney shall ensure that standby counsel is available at such hearing to assist and/or represent the respondents.

COMMENTARY: To conform to amendments to General Statutes Sec. 46b-129

promulgated in Public Acts 09-185, Sec. 3 regarding the assessment of relatives to serve as possible placements or temporary custodians.

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 the necessary parties are present and that the rules governing service on or notice to nonappearing parties, and notice to grandparents, foster parents, relative caregivers and pre-adoptive parents, as applicable, have been complied with, and should note these facts for the record, and may proceed with respect to the parties who (i) are present and have been properly served; (ii) are present and waive any defects in service; and (iii) are not present, but have been properly served. As to any party who [not present and who] has not been properly served, the judicial authority may continue the proceedings with respect to such party for a reasonable period of time for service to be made and confirmed;

(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 assigned to represent the child or youth by the chief child protection attorney, in accordance with General Statutes §§ 46b-123e, 46b-129a (2), 46b-136 and Section 32a-1 of these rules;

(5) advise the respondents of their right to counsel and their right to have counsel assigned if they are unable to afford representation, determine eligibility for state paid representation and notify the chief child protection attorney to 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 not later than ten days 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, if necessary, inquiring of the mother of the child or youth, under oath, as to the identity and address of any person who might be the father of the child or youth and 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 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; and[.]

(12) identify any person or persons related to the child or youth by blood or marriage residing in this state or out of state who might serve as licensed foster parents or temporary custodians, and order the commissioner of the department of children and families to investigate and determine the appropriateness of placement of the child or

youth with such relative or relatives pursuant to General Statutes § 46b-129(c) and provide a written report to the court no later than 30 days from the date of the preliminary hearing and notify all counsel of record or set a reasonable date for such a report if a relative lives outside the state.

(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 appear to be held as soon as practicable but not later than ten days 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) Subject to the requirements of Section 33a-7 (a) (6), upon motion of any party or on its own motion, the judicial authority may consolidate the hearing, on the order of temporary custody or order to appear with the adjudicatory phase of the trial on the underlying petition. At a consolidated order of temporary custody and neglect adjudication hearing, the judicial authority shall determine the outcome of the order of temporary custody based upon whether or not continued removal is necessary to ensure the child's or youth's safety, irrespective of its findings on whether there is sufficient evidence to support an adjudication of neglect or uncared for. Nothing in this subsection prohibits the judicial authority from proceeding to disposition of the underlying petition immediately after such consolidated hearing if the social study has been filed and the parties had previously agreed to sustain the order of temporary custody and waived the ten day hearing or the parties should reasonably be ready to proceed.

COMMENTARY: To conform to amendments promulgated by P.A. 09-185 and 10-43, which require the judicial authority to examine the mother of the child/youth under oath to ascertain the father's identity and location, and require the judicial authority to inquire as to the existence of relatives who could serve as placements for the child or youth at the preliminary order of temporary custody hearing. Subsection (a) (1) is amended to conform to current practice.

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) and (c), 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, 12-3, 13-1 through 13-11 inclusive, 13-14, 13-16, 13-21 through 13-32 inclusive, subject to Sec. 34a-20, 15-3, 15-8, 17-4, and 17-21 of the rules of practice shall apply to juvenile matters in the civil session 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: Section 15-3 is added to subsection (b) because motions in limine are now common practice in juvenile matters in the civil session. The other change in subsection (b) clarifies that the civil motions referred to in this Practice Book section are applicable only to juvenile matters in the civil session as defined by General Statutes § 46b-121, and not to juvenile matters in the criminal session, such as delinquency cases.

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

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

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

COMMENTARY: The revision reflects the fact that it is the right to trial that is being waived, not the right to counsel.

Sec. 35a-4. [Intervening Parties] Motions to Intervene

[(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 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 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 person, the judicial authority shall consider:

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

(2) whether the movant has a direct and immediate interest in the case;

(3) whether the 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 person may appear by counsel or in person. Intervenors are responsible for obtaining their own counsel and are not entitled to state paid representation by the chief child protection attorney.

(e) When a judicial authority grants a motion to intervene in proceedings concerning a pending neglect or uncared for petition, the judicial authority may determine at the time of disposition of the petition whether good cause exists to permit said intervenor to participate in future proceedings as a party and what, if any further actions, the intervenor is required to take.]

(a) Interventions by any person related to the child or youth by blood or marriage for temporary custody or guardianship shall be governed by General Statutes § 46b-129(c) or (d). All motions for intervention shall state with specificity the movant's interest and relief requested.

(b) Upon motion of any sibling of any child committed to the commissioner of the department of children and families pursuant to General Statutes § 46b-129, such sibling shall have the right to be heard concerning visitation with, and placement of, any such child. In awarding any visitation or modifying any placement, the judicial authority shall be guided by the best interests of all siblings affected by such determination.

(c) Other persons unrelated to the child or youth by blood or marriage, or persons related to the child or youth by blood or marriage who are not seeking to serve as a placement, temporary custodian or guardian of the child may move to intervene in the dispositional phase of the 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.

(d) In making a determination upon a motion to intervene, the judicial authority may consider: the timeliness of the motion as judged by the circumstances of the case; whether the movant has a direct and immediate interest in the case; whether the movant's interest is not adequately represented by existing parties; whether the intervention may cause delay in the proceedings or other prejudice to the existing parties; the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority; and the best interests of the child.

(e) Any intervenor shall appear in person, with or without counsel, and shall not be entitled to court appointed counsel or the assignment of counsel by the Chief Child Protection Attorney except as provided in General Statutes §46b-136.

(f) The judicial authority, may, on motion of any party or on its own motion, after notice and a hearing, terminate any person's intervenor status if such person's participation in the case is no longer warranted or necessary. The judicial authority may determine if good cause exists to permit the intervenor to continue to participate in future proceedings as a party and what, if any further actions, the intervenor is required to take.

COMMENTARY: To make the Practice Book provisions on intervenors conform to 2009 amendments to Section 46b-129(c) and (d). (Public Act 09-185).

(NEW) Sec. 35a-12A. Motions for Transfer of Guardianship

(a) Motions to transfer guardianship are dispositional in nature, based on the prior adjudication.

(b) In cases in which a motion for transfer of guardianship seeks to vest guardianship of a child or youth in any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interest of the child. In such cases, there shall be a rebuttable presumption that the award of legal guardianship to that relative shall be in the best interests of the child or youth and that such relative is a suitable and worthy person to assume legal guardianship. The presumption may be rebutted by a preponderance of the evidence that an award of legal guardianship to such relative would not be in the child's or youth's best interests and such

relative is not a suitable and worthy person.

(c) In cases in which a motion for transfer of guardianship, if granted, would require the removal of a child or youth from any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the initial burden of proof that an award of legal guardianship to, or an adoption by, such relative would not be in the child's or youth's best interest and that such relative is not a suitable and worthy person. If this burden is met, the moving party then has the burden of proof that the movant's proposed guardian is suitable and worthy and that transfer of guardianship to that proposed guardian is in the best interest of the child.

(d) In all other cases, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interest of the child.

COMMENTARY: The requirement that guardians must be suitable and worthy accords with General Statutes § 46b-129(j). For the requirement that transfers of guardianship must be in a child's best interest, see *In re Haley B.*, 81 Conn. App. 62, 65 (2004). The requirements regarding the presumptions incorporated in sub-sections (b) and (c) accord with General Statutes § 46b-129(j) (PA 09-185).

Sec. 35a-14. Motions for Review of Permanency Plan

(a) Motions for review of the permanency plan 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 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 pursuant to General Statutes § 46b-129 (m) and subject to Section 35a-14A.

(b) At the time of the filing of a motion for review of permanency plan pursuant to subsection (a), the commissioner of the department of children and families shall also request a finding that it has made reasonable efforts to achieve the goal of the existing plan. The social study filed pursuant to subsection (a) shall include information indicating what efforts the commissioner has taken to achieve the goal of the existing plan.

[(b)] (c) Once a motion for review of the permanency plan and requested findings regarding efforts to achieve the goal of the existing plan [has] have been filed, the clerk of the court shall set a hearing not later than ninety days thereafter. The [court] judicial authority 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 any such motion shall file a written objection and state with specificity the reasons therefor within thirty days after the filing of the commissioner of the department of children and families' motion for review of permanency plan and the objection shall be considered at the hearing. The [court] judicial authority 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 may be granted by the judicial authority at the date of said hearing.

[(c)] (d) Whether to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made [is a] are dispositional questions, based on the prior adjudication, and the judicial authority shall determine whether it is in the best interests of the child or youth to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made upon a fair preponderance of the evidence. 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 and that it has made reasonable efforts to achieve the goal of the existing plan.

[(d)] (e) At each hearing on a motion for review of permanency plan, the judicial authority shall 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 goal of the existing 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)] (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 for a finding regarding reasonable efforts to achieve the goal of the existing plan nine months after the prior permanency plan hearing. No later than twelve months after the prior permanency plan hearing, the judicial authority shall hold a subsequent permanency review hearing in accordance with this section [subsection (d)].

[(f)] (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 shall not be precluded from initiating a proceeding in the best interests of the child or youth considering the needs for safety and permanency.

[(g)] (h) Where a petition for termination of parental rights is granted, the guardian or statutory parent of the child or youth shall report to the judicial authority not later than thirty days 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 hearing 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 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 shall make factual findings whether or not reasonable efforts to achieve the permanency plan or promote adoption have been made.

COMMENTARY: The proposed provisions for filing and hearing of motions for approval of permanency plans and findings to achieve permanency plans implement 42 U.S.C. Sec. 675(5)(C)(i) and 45 C.F.R. Sec. 1356.21.

Sec. 35a-14A. Revocation of Commitment

[A party] Where a child or youth is committed to the commissioner of the department of children and families, the commissioner, a parent or the child's attorney 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 have elapsed from the date of the filing of the prior motion unless waived by the judicial authority.

COMMENTARY: To conform the above Practice Book rule to the statute authorizing motions for revocation, General Statutes § 46b-129(m).

Sec. 35a-20. Motions for Reinstatement of Parent or Former Legal Guardian as Guardian or Modification of Guardianship Post-Disposition

(a) Whenever a parent or former legal guardian whose guardianship rights to a child or youth were removed and transferred to another person or an agency other than the department of children and families 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 former legal guardian may file a motion for reinstatement of guardianship with the court that ordered the transfer of guardianship. In other post-dispositional cases concerning a child or youth whose legal guardianship was transferred to a person other than a parent or former legal guardian, or to an agency other than the

department of children and families, any person permitted to intervene may move the court to modify the award 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)] (b) The clerk shall assign such motion a hearing date and issue a summons to the current guardian and the nonmoving parent or parents. The moving party shall cause a copy of such motion and summons to be served on the child's or youth's current legal guardian(s) and the nonmoving parent or parents.

[(d)] (c) Before acting on such 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 a home study that sets forth written findings and recommendations before rendering a decision.

(d) The hearing on a motion for reinstatement of guardianship is dispositional in nature. The party seeking reinstatement of guardianship has the burden of proof to establish that cause for transfer of guardianship to another person or agency no longer exists. The judicial authority shall then determine if reinstatement of guardianship is in the child's or youth's best interest.

(e) The hearing on a motion for post-dispositional modification of a guardianship order is dispositional in nature. The party seeking to modify the existing guardianship order has the burden of proof to establish that the movant's proposed guardian is suitable and worthy. The judicial authority shall then determine if transfer of guardianship to that proposed guardian is in the child's or youth's best interest.

COMMENTARY: For the requirements regarding elements and burden of proof in reinstatement of guardianship actions, see *In re Juvenile Appeal (Anonymous)*, 177 Conn. 648 (1979). For other post-dispositional motions to transfer guardianship, the requirement that guardians must be suitable and worthy accords with General Statutes § 46b-129(j). For the requirement that transfers of guardianship must be in a child's best interest, see *In re Haley B.*, 81 Conn. App. 62, 65 (2004).

APPENDIX D (022811) mins

Sec. 11-18. —Oral Argument of Motions in Civil Matters

(a) Oral argument is at the discretion of the judicial authority except as to motions to dismiss, motions to strike, motions for summary judgment, motions for judgment of foreclosure, and motions for judgment on the report of an attorney trial referee and/or hearing on any objections thereto. For those motions, oral argument shall be a matter of right, provided:

(1) the motion has been marked ready for adjudication in accordance with the procedure [indicated in the notice] that [accompanies] is printed on the short calendar on which the motion appears, and

(2) the movant indicates at the bottom of the first page of the motion or on a reclaim slip that oral argument or testimony is desired or

(3) a nonmoving party files and serves on all other parties pursuant to Sections 10-12 through 10-17, with proof of service endorsed thereon, a written notice stating the party's intention to argue the motion or present testimony. Such a notice shall be filed on or before the third day before the date of the short calendar date and shall contain (A) the name of the party filing the motion and (B) the date of the short calendar on which the matter appears.

(b) As to any motion for which oral argument is of right and as to any other motion for which the judicial authority grants or, in its own discretion, requires argument or testimony, the date for argument or testimony shall be set by the judge to whom the motion is assigned.

(c) If a case has been designated for argument as of right or by the judicial authority but a date for argument or testimony has not been set within thirty days of the date the motion was marked ready, the movant may reclaim the motion.

(d) Failure to appear and present argument on the date set by the judicial authority shall constitute a waiver of the right to argue unless the judicial authority orders otherwise.

(e) Notwithstanding the above, all motions to withdraw appearance, except those under Section 3-9 (b), and any other motions designated by the chief court administrator in the civil short calendar standing order shall be set down for oral argument.

(f) For those motions for which oral argument is not a matter of right, oral argument

may be requested in accordance with the procedure that is printed on the short calendar on which the motion appears.

APPENDIX E (022811) mins

Sec. 24-29. —Decision in Small Claims; Time Limit

(a) A written decision stating the reasons for the decision shall be required in matters in which a contested hearing is held, in which a counterclaim is filed or in which a judgment is entered in an amount other than the amount claimed. Nothing in this section precludes the judicial authority from filing a written decision in any matter when such judicial authority deems it appropriate.

(b) Judgments shall be rendered no later than forty-five days from the completion of the proceedings unless such time limit is waived in writing by the parties or their representatives. The judgment of the judicial authority shall be recorded by the clerk and notice of the judgment and written decision shall be [mailed] sent by mail or electronic delivery to each party or representative, if any[, in a sealed envelope].

COMMENTARY: The above change makes this rule consistent with Section 24-14.