

Minutes of the Meeting
Rules Committee
March 21, 2011

On Monday, March 21, 2011, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 4:00 p.m.

Members in attendance were:

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

The Honorable Leslie I. Olear 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 J. Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the February 28, 2011, meeting.
2. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler on behalf of the Statewide Grievance Committee to amend Rule 7.2 of the Rules of Professional Conduct concerning attorney advertising. Attorney Bowler was invited to attend this meeting and participated in the discussion of this matter.

After discussion, the Committee determined that Judge Prescott and Attorney Bowler will coordinate on a revision to the proposal, which will then be forwarded to the CBA Professional Discipline Committee for review and comment.

3. The Committee continued its consideration of the proposed revisions to the camera rules submitted by Judge Barbara M. Quinn, Chief Court Administrator, on behalf of the Judicial Media Committee. At its February meeting, the Committee voted to submit to public hearing the proposed revisions to Section 1-11A of those rules.

After discussion, the Committee unanimously voted to submit to public hearing the rest of the proposed revisions as set forth in Appendix A attached hereto.

4. The Committee considered the ABA Standing Committee on Client Protection's Draft Model Rules for Client Trust Account Records and comments thereon by Probate Court Administrator Paul Knierim, Statewide Bar Counsel Michael Bowler, and Attorney Peter T. Mott on behalf of the CBA Estates and Probate Section.

After discussion, the Committee unanimously voted to submit to public hearing a revision to Rule of Professional Conduct 1.15 and Practice Book Section 2-27 as set forth in Appendix B attached hereto.

5. The Committee considered an article concerning political contributions by lawyers for the purpose of obtaining government business, and comments thereon by Statewide Bar Counsel Michael Bowler and Probate Court Administrator Paul Knierim.

After discussion, the Committee unanimously voted to take no action with regard to this article.

6. The Committee considered proposals by the Judges Advisory Committee to amend the rules with regard to e-filing. The proposed revisions are intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present Practice Book terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

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

7. The Committee considered a proposal by Attorney Hilary B. Miller to amend Section 2-28A concerning attorney advertising and comments thereon by Statewide Bar Counsel Michael Bowler.

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

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 referred this proposal to the Jury Committee for its consideration and comment.

9. The Committee considered a proposal by Judge Quinn to amend Chapter 19 to implement CGS § 45a-186 as amended by PA 09-114 concerning the referral of certain probate appeals to special assignment probate judges.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Chapter 19 as set forth in Appendix D attached hereto.

10. The Committee considered proposals by the Connecticut Trial Lawyers Association and the Connecticut Defense Lawyers Association to amend Section 11-1 and Form 205.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revisions to Section 11-1 and Form 205 as set forth in Appendix E attached hereto.

11. The Committee considered a proposal by Attorney Steven D. Ecker to amend the rules of evidence relating to electronic evidence.

After discussion, the Committee referred the proposal to the Code of Evidence Oversight Committee for review and comment.

12. The Committee considered a request by Judge Bellis that the commentaries to the discovery rules concerning electronically stored information be printed in the Practice Book for two years instead of the customary one year.

After discussion, the Committee unanimously voted that the commentaries to the proposed revisions to Sections 13-1, 13-2, 13-5, 13-9 and 13-14, and proposed new Section 13-33, that were approved by the Rules Committee at its January 24, 2011, meeting for submission to public hearing, and the proposed revisions to Section 13-13 (see paragraph 6 above) that were approved at this meeting for submission to public hearing, be printed in the Practice Book for two years after the adoption of those revisions.

13. The Committee considered a proposal by Judge Quinn to amend Sections 3-4 and 3-5 concerning appearances.

After consideration, the Committee unanimously voted to submit to public hearing the proposed revisions to Sections 3-4 and 3-5 as set forth in Appendix F attached hereto.

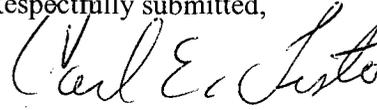
14. The Committee considered a proposal by Attorney Alice Mastrony to amend Section 14-7 and to adopt new Section 14-7B concerning administrative appeals.

Judge Sheldon asked whether these changes would affect affordable housing cases. After discussion, he agreed to find out from Judge Berger if the proposals would affect those cases.

The Committee thereupon unanimously voted to submit to public hearing the proposed revision to Section 14-7 and proposed new Section 14-7B as set forth in Appendix G attached hereto. If Judge Sheldon finds out from Judge Berger that the proposed changes will affect

affordable housing cases, he will advise the Rules Committee and the proposals will be further amended as necessary.

Respectfully submitted,

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

Carl E. Testo
Counsel to the Rules Committee

Attachments

APPENDIX A (032111 mins)

Sec. 1-10B. Media Coverage of Court Proceedings; In General

(a) The broadcasting, televising, recording or photographing by the media of court proceedings and trials in the superior court should be allowed subject to the limitations set out in this section and in Sections 1-11 through 1-11[C] B, inclusive.

(b) No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

(1) Family relations matters as defined in General Statutes § 46b-1;

(2) Juvenile matters as defined in General Statutes § 46b-121;

(3) Proceedings involving sexual assault;

[(3)] (4) Proceedings involving trade secrets;

[(4)] (5) In jury trials, all proceedings held in the absence of the jury unless the trial court determines that such coverage does not create a risk to the defendant's rights or other fair trial risks under the circumstances;

[(5)] (6) Proceedings which must be closed to the public to comply with the provisions of state law;

[(6)] (7) Any proceeding that is not held in open court on the record.

(c) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(d) No broadcasting, televising, recording or photographing of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(e) There shall be no broadcasting, televising, recording or photographing of the process of jury selection nor of any juror.

COMMENTARY: The above changes prohibit the broadcasting, televising, recording or photographing of certain proceedings.

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

(a) Except as otherwise provided by this section and as provided in Sections 1-11A and 1-11C, a judicial authority should prohibit broadcasting, televising, recording, or taking photographs in criminal proceedings.

(b) No broadcasting, televising, recording or photographing of sentencing hearings, except in trials that have been previously broadcast, televised, recorded or photographed,

or of trials or proceedings involving sexual offense charges shall be permitted.

(c) A judicial authority may permit broadcasting, televising, recording or photographing of criminal trials in courtrooms of the superior court except as hereinafter excluded. As used in this rule, the word "trial" in jury cases shall mean proceedings taking place after the jury has been sworn and in nonjury proceedings commencing with the swearing in of the first witness.

(d) Any media or pool representative seeking permission to broadcast, televise, record or photograph a criminal trial shall, at least three days prior to the commencement of the trial, submit a written request to the administrative judge of the judicial district where the case is to be tried. A request submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall refer the request to the trial judge who shall approve or disapprove such request. Disapproval by the trial judge shall be final. Before the trial judge approves of such request, the judge shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair trial, but the right to limit coverage at any time in the interests of the administration of justice shall be reserved to such judge. Approval of the request, however, shall not be effective unless confirmed by the administrative judge. Any media organization seeking permission to participate in a pool whose name was not submitted with the original request may, at any time, submit a separate written request to the administrative judge and shall be allowed to participate in the pool arrangement only with the approval of the trial judge.

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

(f) (1) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned in such location in the courtroom as shall be designated by the trial judge. While

the trial is in progress, the television camera operator shall operate the television camera in this designated location only. Videotape recording equipment and other equipment which is not a component part of the television camera shall be located outside the courtroom.

(2) Only one still camera photographer, carrying not more than two still cameras with one lens for each camera, shall be permitted in the courtroom. The still camera photographer shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the still camera photographer shall photograph court proceedings from this designated location only.

(3) Only one audio system for televising, broadcasting and recording purposes shall be permitted in the courtroom. Audio pickup for such purposes shall be accomplished from the existing audio system in the court facility. If there is no technically suitable audio system in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the trial judge.

(g) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the trial.

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

(i) The judicial authority in its discretion may require pooling arrangements by the media. Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judicial authority to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the judicial authority shall not permit that medium to have coverage at the trial.

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

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

(l) To evaluate prospective problems where approval for broadcasting, televising, recording or photographing of a trial has been granted, and to ensure compliance with these rules during the trial, a mandatory pretrial conference shall be held by the trial judge, attorneys and media personnel. At such conference the trial judge shall review these rules and set forth the conditions of coverage in accordance therewith.]

COMMENTARY: The above section is deleted in light of the revisions to Section 1-11C, which will become Section 1-11.

Sec. 1-11[C]. [Pilot Program for] Media Coverage of Criminal Proceedings

(a) Except as authorized by section 1-11A regarding media coverage of arraignments, the broadcasting, televising, recording or photographing by media of criminal proceedings and trials in the superior court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in 1-10B. [Notwithstanding the provisions of Section 1-11, and except as otherwise provided in Section 1-11A regarding media coverage of arraignments, the broadcasting, televising, recording or photographing by media of criminal proceedings and trials in the superior court shall be allowed except as hereinafter precluded or limited and subject to the limitations set forth in Section 1-10B, in a single judicial district of the superior court to be chosen by the chief court administrator based on the following considerations:

(1) the age of the courthouse facility, its ability to accommodate the media technology involved, and security and cost concerns;

(2) the volume of cases at such facility and the assignment of judges to the judicial district;

(3) the likelihood of significant criminal trials of interest to the public in the judicial district;

(4) the proximity of the judicial district to the major media organizations; and to the organization or entity providing coverage;

(5) the proximity of the courthouse facility to the Judicial Branch administrative offices.]

(b) No broadcasting, televising, recording or photographing of trials or proceedings involving sexual offense charges shall be permitted.

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

(d) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a criminal proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried. A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall inform the judicial authority who will hear the proceeding or who will preside over the trial of the notice, and the judicial authority shall allow such coverage except as otherwise provided.

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

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

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

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

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

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

[(j)] No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the proceeding or trial.]

[(k)(1) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be

positioned in such location in the courtroom as shall be designated by the trial judge. Microphones, related wiring and equipment essential for the broadcasting, televising or recording shall be unobtrusive and shall be located in places designated in advance by the trial judge. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only.

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

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

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

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

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

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

[(o) Unless good cause is shown, any media or pool representative seeking to broadcast, televise, record or photograph a criminal proceeding or trial shall, at least three days prior to the commencement of the proceeding or trial, submit a written notice of media coverage to the administrative judge of the judicial district where the proceeding is to be heard or the case is to be tried. A notice of media coverage submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall inform the judicial authority who will hear the proceeding or who will preside over the trial of the notice, and the judicial authority shall allow such coverage except as otherwise provided. Any news organization seeking permission to participate in a pool whose name was not submitted with the original notice of media coverage may, at any time, submit a separate written notice to the administrative judge and shall be allowed to participate in the pool arrangement.]

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

[(q) The Rules Committee shall evaluate the efficacy of this rule at the end of a two year period and shall receive recommendations from the Judicial-Media Committee and other sources.]

COMMENTARY: The above revisions permit broadcasting, televising, recording or photographing of criminal trials around the state. Such coverage will no longer be limited to the pilot area in Hartford.

Appendix B (032111)

Rule 1.15. Safekeeping Property

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

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

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

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

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

total assets of at least \$250,000,000.

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

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

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

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

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

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

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

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

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

(g) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

(h) An IOLTA account may only be established at an eligible institution that meets

the following requirements:

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

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

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

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

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

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

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one

percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

(B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.

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

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

(A) Each June mail to each judge of the superior court and to each lawyer or law

firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;

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

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

(D) Submit to audits by the judicial branch; and

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

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

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

collection, management and distribution of such funds;

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

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

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

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

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

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

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

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

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

(1) receipt and disbursement journals containing a record of deposits to and

withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

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

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

(5) copies of bills for legal fees and expenses rendered to clients;

(6) copies of records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

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

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

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

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

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

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

(3) withdrawals shall be made only by check payable to a named payee and not to

cash, or by authorized electronic transfer.

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

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

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

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

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

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

Subsection (f) also recognizes that third parties, such as a client's creditor who has a lien on funds recovered in a personal injury action, may have lawful claims against specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the

client. In such cases the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

The word “interests” as used in subsection (f) includes, but is not limited to, the following: a valid judgment concerning disposition of the property; a valid statutory or judgment lien, or other lien recognized by law, against the property; a letter of protection or similar obligation that is both (a) directly related to the property held by the lawyer, and (b) an obligation specifically entered into to aid the lawyer in obtaining the property; or a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

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

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

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

Subsection (i) requires that lawyers maintain client trust account records, including the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks for a period of at least

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

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection (i)(8).

There are five types of check conversions where a lawyer should be careful to comply with the requirements of subsection (i)(8). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in a "account-receivable conversion," a paper check is converted into a

debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Subsection (i)(8) applies to each of the type of electronic funds transfers described. All electronic funds transfers shall be recorded and a lawyer should not re-use a check number which has been previously used in an electronic transfer transaction.

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

In some situations, documentation in addition to that listed in paragraphs (1) through (9) of subsection (h) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under paragraph (10) of subsection (h) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this paragraph include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the

client).

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

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

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

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

required by law or court rule.

Subsections (l) and (m) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules 1.0 (d), (h), and (i) of the Rules of Professional Conduct.

AMENDMENT NOTES: The above revisions are based on the ABA Model Rules for Client Trust Account Records.

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 Rule 1.15 of the Rules of Professional Conduct and Section 2-28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the 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] by Rule 1.15 of the Rules of Professional Conduct for a period of seven years after [final distribution of such funds or any portion thereof] termination of the representation. [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] Rule 1.15 of the Rules of Professional Conduct, shall be made available upon request of the statewide grievance committee or its counsel, or the disciplinary counsel for review, examination or audit upon receipt of notice by the statewide grievance committee of an overdraft notice as provided by Section 2-28 (f). Upon the filing of a grievance complaint or a finding of probable cause, such records shall be made available upon request of the statewide grievance committee, its counsel or the disciplinary counsel for review or audit.

(d) Each 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] Rule 1.15 of the Rules of Professional Conduct to determine whether such accounts are in compliance with the Rule and 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. The financial record keeping requirements previously set forth in subsection (b) have been moved to Rule 1.15 (i) of the Rules of Professional Conduct.

APPENDIX C (032111 mins)

COMMENTARY: The following revisions are intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.

Sec. 1-1. Scope of Rules; Definitions

(a) The rules for the superior court govern the practice and procedure in the superior court in all civil and family actions whether cognizable as cases at law, in equity or otherwise, in all criminal proceedings and in all proceedings on juvenile matters. These rules also relate to the admission, qualifications, practice and removal of attorneys.

(b) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to civil, family, criminal and juvenile matters in the superior court.

(c) (1) The term “judicial authority,” as used in the rules for the superior court, means the superior court, any judge thereof, each judge trial referee when the superior court has referred a case to such trial referee pursuant to General Statutes § 52-434, and for purposes of the small claims rules only, any magistrate appointed by the chief court administrator pursuant to General Statutes § 51-193/.

(2) Except as otherwise provided, the words “write,” “written” and “writing” as used in the rules for the superior court shall mean typed or printed either on paper or, when electronically submitted or issued, in a digital format that complies with the procedures and technical standards established by the office of the chief court administrator pursuant to section 4-4.

(3) Except as otherwise provided, the words “paper” and “document” as used in the rules for the superior court shall include an electronic submission that complies with the procedures and technical standards established by the office of the chief court administrator pursuant to section 4-4 and a paper or document converted to a digital format by the judicial branch.

Sec. 2-4. — Regulations by Examining Committee

The committee shall have the power and authority to implement these rules by regulations relevant thereto and not inconsistent therewith. Such regulations may be adopted at any regular meeting of the committee or at any special meeting called for that

purpose. They shall be effective ninety days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee or by the judges of the superior court. A copy shall be [mailed] provided to the chief justice.

Sec. 2-14. — Action by Bar; Temporary License

Upon the filing of such application, certificates and affidavits, the administrative director of the bar examining committee shall [send] provide a copy thereof to the chair of the standing committee on recommendations for admission to the bar. When said committee shall have acted upon the application it shall notify the clerk of the superior court for the county in which the applicant seeks admission who shall give notice to every member of the bar of the county of a meeting of the bar of the county at which the report of the standing committee on recommendations upon the application will be presented. After said application is acted upon at such bar meeting, the standing committee on recommendations for admission shall file with the clerk a copy of its report, with the action of the meeting endorsed thereon. The application for admission may then be claimed for the short calendar, of which claim the clerk shall give notice to every member of the bar of the county. Such admission shall, however, be upon a temporary license for a period of one year.

Sec. 2-74. — Regulations of Client Security Fund Committee

The client security fund committee shall have the power and authority to implement these rules by regulations relevant to and not inconsistent with these rules. Such regulations may be adopted at any regular meeting of the client security fund committee or at any special meeting called for that purpose. The regulations shall be effective sixty days after publication in one issue of the Connecticut Law Journal and shall at all times be subject to amendment or revision by the committee. A copy shall be [mailed] provided to the chief justice, the chief court administrator, and the executive committee of the superior court.

Sec. 3-3. Form and Signing of Appearance

Each appearance shall (1) be [typed or printed on size 8 1/2 x 11 inch paper] filed on

judicial branch form JD-CL-12, (2) [be headed with] include the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual's own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto if any, the mailing address and the telephone number. This section shall not apply to appearances entered pursuant to Section 3-1.

Sec. 4-1. Form of Pleading

(a) All [papers] documents filed in paper format shall be typed or printed on size 8 1/2 by 11 inch paper and shall have no back or cover sheet. Those subsequent to the complaint shall be headed with the title and number of the case, the name of the court, and the date and designation of the particular pleading, in conformity with the applicable form in the rules of practice which is set forth in the Appendix of Forms in this volume.

(b) At the bottom of the first page of each paper, a blank space of approximately two inches shall be reserved for notations of receipt or time of filing by the clerk and for statements by counsel pursuant to Section 11-18 (a) (2)[, and at the top of each page a blank space of two inches shall be reserved]. Papers shall be punched with two holes two and twelve-sixteenths inches apart, each centered seven-sixteenths of an inch from the upper edge, one being two and fourteen-sixteenths inches from the left-hand edge and the other being the same distance from the right-hand edge, and each four-sixteenths of an inch in diameter.

(c) All documents filed electronically shall be in substantially the same format as required by subsection (a) of this section.

(d) The clerk may require a party to correct any filed paper which is not in compliance with this section by substituting a paper in proper form.

[(d)] (e) This section shall not apply to forms supplied by the judicial branch.

Sec. 7-5. Notice to Attorneys and Pro Se Parties

The clerk shall give notice, by mail or by electronic delivery, to the attorneys of record and pro se parties unless otherwise provided by statute or these rules, of all

judgments, nonsuits, defaults, decisions, orders and rulings unless made in their presence. The clerk shall record in the court file the date of the issuance of the notice.

Sec. 10-36. — Reasons in Request to Revise

The request to revise shall set forth, for each requested revision, the portion of the pleading sought to be revised, the requested revision, and the reasons therefor, and, except where the request is served electronically in accordance with Section 10-13, in a format that allows the recipient to insert electronically the objection and reasons therefore, [followed by] provide sufficient space in which the party to whom the request is directed can insert an objection and reasons therefor.

Sec. 10-37. — Granting of and Objection to Request to Revise

(a) Any such request, after service upon each party as provided by Sections 10-12 through 10-17 and with proof of service endorsed thereon, shall be filed with the clerk of the court in which the action is pending, and such request shall be deemed to have been automatically granted by the judicial authority on the date of filing and shall be complied with by the party to whom it is directed within thirty days of the date of filing the same, unless within thirty days of such filing the party to whom it is directed shall file objection thereto.

(b) The objection and the reasons therefor shall be inserted on the request to revise in the space provided under the appropriate requested revision. In the event that a reason for objection requires more space than that provided on the request to revise, it shall be continued on a separate sheet of paper which shall be attached to that document, except where the request is served electronically as provided in Section 10-13 and in a format that allows the recipient to electronically insert the objection and reasons therefor. The request to revise on which objections have been inserted shall be appended to a cover sheet which shall comply with Sections 4-1 and 4-2 and the objecting party shall specify thereon to which of the requested revisions objection is raised. The cover sheet with the appended objections shall be filed with the clerk within thirty days from the date of the filing of the request for the next short calendar list. If the judicial authority overrules the objection, a substitute pleading in compliance with the order of the judicial authority shall be filed within fifteen days of such order.

Sec. 11-1. Form of Motion and Request

Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing [and shall, except in the case of a request, have annexed to it a proper order, and a proper order of notice and citation, if one or both are necessary].

(a) For civil matters, with the exception of housing and small claims matters, when any motion, application, or objection is filed either electronically or on paper, no order page should be filed unless an order of notice and citation is necessary.

(b) For family, juvenile, housing and small claims matters, when any motion application or objection is filed in paper format, an order shall be annexed to the filing until such cases are incorporated into the Judicial Branch's electronic filing system. Once these case types are incorporated into such electronic filing system, no order page should be filed unless an order of notice and citation is necessary.

(c) Whether filed under subsection (a) or (b), [S]such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon.

Sec. 11-13. Short Calendar; Need for List; Case Assigned for Trial; Reclaims

(a) Unless otherwise provided in these rules or ordered by the judicial authority, questions as to the terms or form of a decree or judgment to be rendered on the report of a committee or of auditors, or on an award of arbitrators, foreclosures where the only question is as to the time to be limited for redemption, all motions and objections to requests when practicable, and all issues of law must be placed on the short calendar list. No motions will be heard which are not on said list and ought to have been placed thereon; provided that any motion in a case on trial, or assigned for trial, may be disposed of by the judicial authority at its discretion, or ordered upon the short calendar list on terms, or otherwise.

(b) [Whenever] Unless it is filed electronically, whenever a short calendar matter or reclaim slip is filed in a case which has been assigned for trial, the filing party shall place the words "assigned for trial" on the bottom of the first page of the document and on any short calendar reclaim slip. The moving party at a short calendar hearing shall, when

applicable, inform the judicial authority that the case has been assigned for trial.

(c) If a motion has gone off the short calendar without being adjudicated any party may claim the motion for adjudication. If an objection to a request has gone off the short calendar without being adjudicated, the party who filed the request may claim the objection to the request for adjudication. If a case is on the docket management list, any party may claim any motion or objection for adjudication when the motion or objection must be resolved to close the pleadings.

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] appears on the short calendar on which the motion appears, [and] or

[(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)] (2) 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.

Sec. 11-20. Closure of Courtroom in Civil Cases

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be filed not less than fourteen days before the proceeding is scheduled to be heard. Such motion shall be placed on the

short calendar so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority. When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the judicial branch website. A [copy of] notice of such motion being placed on the short calendar [page containing the aforesaid section] shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

(f) With the exception of any provision of the General Statutes under which the judicial authority is authorized to close courtroom proceedings, whether at a pretrial or trial stage, no order excluding the public from any portion of a courtroom proceeding shall be effective until seventy-two hours after it has been issued. Any person affected by such order shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. The timely filing of any petition for review shall stay such order.

Sec. 11-20A. Sealing Files or Limiting Disclosure of Documents in Civil Cases

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in

connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction, sealing a portion of the file or authorizing the use of pseudonyms. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) With the exception of any provision of the General Statutes under which the

court is authorized to seal or limit the disclosure of files, affidavits, documents, or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

(h) (1) Pseudonyms may be used in place of the name of a party or parties only with the prior approval of the judicial authority and only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party or parties. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. The judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by the court clerk in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order. An agreement of the parties that pseudonyms be used shall not constitute a sufficient basis for the issuance of such an order. The authorization of pseudonyms pursuant to this section shall be in place of the names of the parties required by Section 7-4A.

(2) The judicial authority may grant prior to the commencement of the action a temporary ex parte application for permission to use pseudonyms pending a hearing on continuing the use of such pseudonyms to be held not less than fifteen days after the return date of the complaint.

(3) After commencement of the action, a motion for permission to use pseudonyms shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. Leave of the court may be

sought to file the motion under seal pending a disposition of the motion by the judicial authority.

(4) Any order allowing the use of a pseudonym in place of the name of a party shall also require the parties to use such pseudonym in all documents filed with the court.

(i) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(j) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the judicial branch website. A [copy of] notice of such motion being placed on the short calendar [page containing the aforesaid section] shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

Sec. 13-13. Disclosure of Assets in Cases in Which Prejudgment Remedy Sought

(a) The judicial authority may, on motion, order any appearing party against whom a prejudgment remedy has been granted to disclose property in which the party has an interest or debts owing to the party sufficient to satisfy a prejudgment remedy. The existence, location and extent of a party's interest in such property or debts shall be subject to disclosure after hearing on the motion for disclosure. The form and terms of disclosure shall be determined by the judicial authority.

(b) A motion to disclose pursuant to this section may be made by [attaching] filing it [to] with the application for a prejudgment remedy or may be made at any time after the filing of the application.

(c) The judicial authority may order disclosure at any time prior to final judgment after it has determined that the party filing the motion for disclosure has, pursuant to either General Statutes §§ 52-278d, 52-278e or 52-278i, probable cause sufficient for the issuance of a prejudgment remedy.

(d) Any party, in lieu of disclosing assets pursuant to subsection (a), may move the judicial authority for substitution either of a bond with surety substantially in compliance with General Statutes §§ 52-307 and 52-308 or of other sufficient security.

Sec. 14-3. Dismissal for Lack of Diligence

(a) If a party shall fail to prosecute an action with reasonable diligence, the judicial authority may, after hearing, on motion by any party to the action pursuant to Section 11-1, or on its own motion, render a judgment dismissing the action with costs. At least two weeks' notice shall be required except in cases appearing on an assignment list for final adjudication. Judgment files shall not be drawn except where an appeal is taken or where any party so requests.

(b) If a case [is printed] appears on a docket management calendar pursuant to the docket management program administered under the direction of the chief court administrator, and a motion for default for failure to plead is filed pursuant to Section 10-18, only those papers which close the pleadings by joining issues, or raise a special defense, may be filed by any party, unless the judicial authority otherwise orders.

Sec. 16-15. Materials to Be Submitted to Jury

(a) The judicial authority shall submit to the jury all exhibits received in evidence.

(b) The judicial authority may, in its discretion, submit to the jury:

(1) The complaint, counterclaim and cross complaint, and responsive pleadings thereto;

(2) A copy or [tape] audio recording of the judicial authority's instructions to the jury;

(3) Upon request by the jury, a copy or [tape] audio recording of an appropriate portion of the judicial authority's instructions to the jury.

Sec. 17-7. Special Finding; Request

A request for a special finding of facts under General Statutes § 52-226, shall be by written motion filed [in duplicate] within fourteen days after the entry of judgment.

Sec. 17-20. Motion for Default and Nonsuit for Failure to Appear

(a) Except as provided in subsection (b), if no appearance has been entered for any party to any action on or before the second day following the return day, any other party to the action may make a motion that a nonsuit or default be entered for failure to appear.

(b) In an action commenced by a mortgagee prior to July 1, 2010, for the foreclosure of a mortgage on residential real property consisting of a one to four-family dwelling occupied as the primary residence of the mortgagor, with a return date on or after July 1, 2008, if no appearance has been entered for the mortgagor on or before the fifteenth day after the return day or, if the court has extended the time for filing an appearance and no appearance has been entered on or before the date ordered by the court, any other party to the action may make a motion that a default be entered for failure to appear.

(c) It shall be the responsibility of counsel filing a motion for default for failure to appear to serve the defaulting party with a copy of the motion. Service and proof thereof may be made in accordance with Sections 10-12, 10-13 and 10-14. Upon good cause shown, the judicial authority may dispense with this requirement when judgment is rendered.

(d) Except as provided in Sections 17-23 through 17-30, motions for default for failure to appear shall be acted on by the clerk not less than seven days from the filing of the motion and shall not be printed on the short calendar. The motion shall be granted by the clerk if the party who is the subject of the motion has not filed an appearance. The provisions of Section 17-21 shall not apply to such motions, but such provisions shall be complied with before a judgment may be entered after default. If the defaulted party files an appearance in the action prior to the entry of judgment after default, the default shall automatically be set aside by operation of law. A claim for a hearing in damages shall not be filed before the expiration of fifteen days from the entry of a default under this subsection, except as provided in Sections 17-23 through 17-30.

(e) A motion for nonsuit for failure to appear shall be [printed] placed on the short calendar. If it is proper to grant the motion, the judicial authority shall grant it without the need for the moving party to appear at the short calendar.

(f) The granting of a motion for nonsuit for failure to appear or a motion for judgment after default for failure to appear shall be subject to the provisions of Sections 9-1 and 17-21. Such motion shall contain either (1) a statement that a military affidavit is attached thereto or (2) a statement, with reasons therefore, that it is not necessary to attach a military affidavit to the motion.

Sec. 17-22. Notice of Judgments of Nonsuit and Default for Failure to Enter an Appearance

A notice of every nonsuit for failure to enter an appearance or judgment after default for failure to enter an appearance, which notice includes the terms of the judgment, shall be [mailed] sent by mail or electronic delivery within ten days of the entry of judgment by counsel of the prevailing party to the party against whom it is directed and a copy of such notice shall be [sent to] filed with the clerk's office. Proof of service shall be in accordance with Section 10-14.

Sec. 17-25. — Motion for Default and Judgment; Affidavit of Debt; Military Affidavit; Bill of Costs; Debt Instrument

(a) The plaintiff shall file a motion for default for failure to appear, judgment and, if applicable, an order for weekly payments. The motion shall have attached to it an affidavit of debt, a military affidavit, a bill of costs and a proposed judgment and notice to all parties. [The proposed notice of judgment shall be filed in duplicate.]

(b) If the instrument on which the contract is based is a negotiable instrument, the affidavit shall state that the instrument is now owned by the plaintiff, and a copy of the executed instrument shall be attached to the affidavit. If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which the interest is computed, which shall not be later than the date of the entry of judgment.

(c) If the moving party claims any lawful charges other than interest, including a reasonable attorney's fee, the affidavit of debt shall set forth the terms of the contract providing for such charge and the amount claimed. If a claim for a reasonable attorney's fee is made, the moving party shall include in the affidavit of debt the reasons for the specific amount requested in order that the judicial authority may determine the relationship between the fee requested and the actual and reasonable costs which are incurred by counsel and a copy of the contract shall be attached to the affidavit.

Sec. 17-27. — Entry of Judgment

[Upon] Not less than seven days from receipt of the motion and affidavits, the clerk shall bring the motion and affidavits to the attention of the judicial authority. If the judicial authority orders judgment entered, the clerk shall complete the proposed judgment and notice to all parties in accordance with the terms of the judgment. The clerk shall

immediately mail or electronically deliver one copy of the judgment and notice to all parties to the plaintiff or plaintiff's attorney.

Sec. 17-29. — Default Motion Not on Short Calendar

No motion for default and judgment filed under Sections 17-24 through 17-28 shall be [printed] placed on the short calendar, unless the judicial authority shall so order. No short calendar claim shall be filed with this motion. Other than as provided for in those sections and in Section 17-20 no notice of a default or of a judgment after default shall be required in connection with any such motion.

Sec. 19-15. Time to File Objections

Objections to the acceptance of a report shall be filed within twenty-one days after the mailing or electronic delivery of the report to the parties or their counsel by the clerk.

Sec. 19-16. Judgment on the Report

After the expiration of twenty-one days from the mailing or electronic delivery of the report, either party may, without written motion, claim the case for the short calendar for judgment on the report of the committee or attorney trial referee, provided, if the parties file a stipulation that no objections will be filed, the case may be so claimed at any time thereafter.

The court may, on its own motion and with notice thereof, schedule the matter for judgment on the report and/or hearing on any objections thereto, anytime after the expiration of twenty-one days from the mailing or electronic delivery of the report to the parties or their counsel by the clerk.

Sec. 21-13. Semiannual Summary of Orders

Every receiver shall, on the first Tuesdays of April and October of each year, file a summary statement of all orders made in said cause during the six months preceding, and the doings thereunder. The clerk shall [hand] refer the statement to the judge holding the term or session then pending, or held next thereafter, who shall, upon examination of the same, make such further orders in said cause as are deemed necessary, and may direct that the cause be placed on the short calendar for an order approving the statement.

Sec. 25-59. Closure of Courtroom in Family Matters

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) A motion to close a courtroom proceeding shall be filed not less than fourteen days before the proceeding is scheduled to be heard. Such motion shall be placed on the short calendar so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The motion itself may be filed under seal, where appropriate, by leave of the judicial authority. When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the judicial branch web site. A [copy of] notice of such motion being placed on the short calendar [page containing the aforesaid section]

shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

Sec. 25-59A. Sealing Files or Limiting Disclosure of Documents in Family Matters

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or filed in connection with a court proceeding shall be calendared so that notice to the

public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction or sealing a portion of the file. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(h) Sworn statements of current income, expenses, assets and liabilities filed with the court pursuant to Section 25-30 shall be under seal and be disclosable only to the judicial authority, to court personnel, to the parties to the action and their attorneys, and to any guardians ad litem and attorneys appointed for any minor children involved in the matter, except as otherwise ordered by the judicial authority. When such sworn statements are filed the clerk shall place them in a sealed envelope clearly identified with the words "Financial Affidavit." All such sworn statements that are filed in a case may be placed in the same sealed envelope. Any person may file a motion to unseal these documents. When such motion is filed, the provisions of paragraphs (a) through (e) of this section shall apply and the party who filed the documents shall have the burden of proving that they should remain sealed. The judicial authority shall order that the automatic sealing pursuant to this paragraph shall terminate with respect to all such sworn statements then

on file with the court when any hearing is held at which financial issues are in dispute. This shall not preclude a party from filing a motion to seal or limit disclosure of such sworn statements pursuant to this section.

(i) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the judicial branch web site. A [copy of] notice of such motion being placed on the short calendar [page containing the aforesaid section] shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

APPENDIX D (032111 mins)

COMMENTARY: The revisions to Sections 19-1, 19-4, 19-7 through 19-11, 19-14, 19-16 and 19-17, and New Section 19-3A set out below are intended to adopt the provisions of General Statutes § 45a-186 as amended by Public Acts 09-114 and 09-01 (September Sp. Sess.).

Sec. 19-1. Application of Chapter

The provisions of this chapter shall govern the procedure in matters, except dissolution of marriage or civil union, legal separation, annulment, and juvenile matters, referred to committees, state referees and senior judges, attorney trial referees, special assignment probate judges, and, so far as applicable, to auditors, appraisers or other persons designated to make reports to the court.

(NEW) Sec. 19-3A. Reference to Special Assignment Probate Judge

The court may refer any appeal filed under General Statutes § 45a-186, except those matters described in subdivision (h) (3) of that statute, to a special assignment probate judge appointed in accordance with General Statutes § 45a-79b who is assigned by the Probate Court Administrator for the purposes of such appeal, except that such appeal shall be heard by the court if any party files a demand for such hearing in writing with the court not later than twenty days after service of the appeal.

Sec. 19-4. Attorney Trial Referees and Special Assignment Probate Judges; Time to File Report

An attorney trial referee or special assignment probate judge to whom a case has been referred shall file a report with the clerk of the court, with sufficient copies for all counsel, within one hundred and twenty days of the completion of the trial before such referee or special assignment probate judge.

Sec. 19-7. Pleadings

No case shall be referred to a committee [or], attorney trial referee or special assignment probate judge until the issues are closed and a certification to that effect has been filed pursuant to Section 14-8. Thereafter no pleadings may be filed except by

agreement of all parties or order of the court or the attorney trial referee or special assignment probate judge. Such pleadings shall be filed with the clerk and a copy filed with the committee [or], the attorney trial referee or the special assignment probate judge.

Sec. 19-8. Report

(a) The report of a committee [or], attorney trial referee or special assignment probate judge shall state, in separate and consecutively numbered paragraphs, the facts found and the conclusions drawn therefrom. It should not contain statements of evidence or excerpts from the evidence. The report should ordinarily state only the ultimate facts found; but if the committee [or], attorney trial referee or special assignment probate judge has reason to believe that the conclusions as to such facts from subordinate facts will be questioned, it may also state the subordinate facts found proven; and any committee, [or] attorney trial referee or special assignment probate judge having reason to believe that the rulings will be questioned may state them with a brief summary of such facts as are necessary to explain them; and the committee [or], attorney trial referee or special assignment probate judge should state such claims as were made by the parties and which either party requests be stated.

(b) The committee [or], attorney trial referee or special assignment probate judge may accompany the report with a memorandum of decision including such matters as it may deem helpful in the decision of the case, and, in any case in which appraisal fees may be awarded by the court, shall make a finding and recommendation as to such appraisal fees as it deems reasonable.

Sec. 19-9. Request for Finding

Either party may request a committee [or], attorney trial referee or special assignment probate judge to make a finding of subordinate facts or of its rulings, and of the claims made, and shall include in or annex to such request a statement of the facts, or rulings, or claims, the party desires the committee [or], attorney trial referee or special assignment probate judge to incorporate in the report.

Sec. 19-10. Alternative Report

If alternative claims are made before the committee [or], attorney trial referee or

special assignment probate judge, or the committee [or], attorney trial referee or special assignment probate judge deems it advisable, it may report all the facts bearing upon such claims and make its conclusions in the alternative, so that the judgment rendered will depend upon which of the alternative conclusions the facts are found legally to support.

Sec. 19-11. Amending Report

A committee [or], attorney trial referee or special assignment probate judge may, at any time before a report is accepted, file an amendment to it or an amended report.

Sec. 19-14. Objections to Acceptance of Report

A party may file objections to the acceptance of a report on the ground that conclusions of fact stated in it were not properly reached on the basis of the subordinate facts found, or that the committee [or], attorney trial referee or special assignment probate judge erred in rulings on evidence or other rulings or that there are other reasons why the report should not be accepted. A party objecting on these grounds must file with the party's objections a transcript of the evidence taken before the committee, except such portions as the parties may stipulate to omit.

Sec. 19-16. Judgment on the Report

After the expiration of twenty-one days from the mailing of the report, either party may, without written motion, claim the case for the short calendar for judgment on the report of the committee [or], attorney trial referee or special assignment probate judge, provided, if the parties file a stipulation that no objections will be filed, the case may be so claimed at any time thereafter.

The court may, on its own motion and with notice thereof, schedule the matter for judgment on the report and/or hearing on any objections thereto, anytime after the expiration of twenty-one days from the mailing of the report to the parties or their counsel by the clerk.

Sec. 19-17. Function of the Court

(a) The court shall render such judgment as the law requires upon the facts in the report. If the court finds that the committee [or], attorney trial referee or special

assignment probate judge has materially erred in its rulings or that there are other sufficient reasons why the report should not be accepted, the court shall reject the report and refer the matter to the same or another committee [or], attorney trial referee or special assignment probate judge, as the case may be, for a new trial or revoke the reference and leave the case to be disposed of in court.

(b) The court may correct a report at any time before judgment upon the written stipulation of the parties or it may upon its own motion add a fact which is admitted or undisputed or strike out a fact improperly found.

APPENDIX E (032111 mins)

Sec. 11-1. Form of Motion and Request

Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing and shall, except in the case of a request, have annexed to it a proper order, and a proper order of notice and citation, if one or both are necessary. Such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon. A motion to extend time to plead, respond to written discovery, object to written discovery, or respond to Requests for Admissions shall state the date through which the moving party is seeking the extension.

COMMENTARY: Motions for extension of time are frequently filed asking “for 30 days.” As a result, it is unclear whether the movant is requesting an extension which ends thirty days after the file date of the motion or thirty days after the motion is granted. That difference can be a month or more, resulting in confusion for the parties and unnecessary motion practice to sort out the confusion.

Form 205

Defendant’s Requests for Production

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

The Defendant(s) hereby request(s) that the Plaintiff provide counsel for the Defendant(s) with copies of the documents described in the following requests for production, or afford counsel for said Defendant(s) the opportunity or, where requested, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorizations shall take place at the offices of _____ not later than thirty (30) days after the service of the Requests for Production.

(1) All hospital records relating to treatment received as a result of the alleged incident, and to injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22, or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said hospital records. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(2) All reports and records of all doctors and all other care providers relating to treatment allegedly received by the Plaintiff(s) as a result of the alleged incident, and to the injuries, diseases or defects to which reference is made in the answers to Interrogatories #19, #20, #21 and #22 (exclusive of any records prepared or maintained by a licensed psychiatrist or psychologist) or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said reports. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(3) If a claim for lost wages or lost earning capacity is being made [C]copies of, or sufficient written authorization to inspect and make copies of, the wage and employment records of all employers of the Plaintiff(s) for three (3) years prior to the date of the incident and for all years subsequent to the date of the incident to and including the date hereof.

(4) If a claim of impaired earning capacity or lost wages is being alleged, provide copies of, or sufficient written authorization to obtain copies of, that part of all income tax returns relating to lost income filed by the Plaintiff(s) for a period of three (3) years prior to the date of the incident and for all years subsequent to the date of the incident through the time of trial.

(5) All property damage bills that are claimed to have been incurred as a result of this incident.

(6) All medical bills that are claimed to have been incurred as a result of this incident or written authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act, to inspect and make copies of said medical bills. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(7) All bills for each item of expense that is claimed to have been incurred in the answer to Interrogatory #18, and not already provided in response to ¶5 and ¶6 above.

(8) Copies of all documentation of claims of right to reimbursement provided to the Plaintiff by third party payors, and copies of, or written authorization, sufficient to comply with provisions of the Health Insurance Portability and Accountability Act, to obtain any and all documentation of payments made by a third party for medical services received or premiums paid to obtain such payment. Information obtained pursuant to the provisions of HIPAA shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

(9) All documents identified or referred to in the answers to Interrogatory #26..

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

(11) Any and all photographs identified in response to Interrogatory #32.

(12) A copy of all records of blood alcohol testing or drug screens referred to in answer to Interrogatory #35, or a signed authorization, sufficient to comply with the provisions of the Health Insurance Portability and Accountability Act or those of the Public Health Service Act, whichever is applicable, to obtain the same. Information obtained pursuant to the provisions of HIPAA or the Public Health Service Act shall not be used or disclosed by the parties for any purpose other than the litigation or proceeding for which such information is requested.

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

DEFENDANT,

BY _____

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, this ___ day of _____, 20__ to _____.

(Attorney Signature)

COMMENTARY: This amendment is proposed in order to make Defendant's Standard Request No. 3 parallel to Defendant's Standard Request No. 4 and compliant with Practice Book Section 13-2, which limits the scope of discovery to materials relevant to the pending action. Defendant's Standard Request No. 4, for the production of tax returns, is contingent upon the making of a lost wage or lost earning capacity claim. Production of wage and employment records should likewise be contingent on the making of a lost wage or lost earning capacity claim. In the absence of a claim, such information is not necessarily relevant, and so should not be the subject of an automatic order. (In a case where the plaintiff does not make a lost wage or earning capacity claim and the defendant nonetheless claims that wage and employment records are material to the pending action, the defendant could certainly seek permission to obtain those records through additional discovery.)

APPENDIX F (032111 mins)

Sec. 3-4. Filing Appearance [with the Clerk—Copies]

Appearances shall be filed with the clerk of the court location where the matter is pending.

(a) Whenever an appearance is filed in any civil or family action [returnable to a judicial district of the superior court], including appearances filed in addition to or in place of another appearance, [only an original need be filed and the clerk with whom it is filed shall cause notice thereof to be given to all other counsel and pro se parties of record in the action] a copy shall be mailed or delivered to all counsel and self-represented parties of record. [Whenever an appearance is filed in any criminal case or juvenile matter, only the original need be filed. Whenever an appearance is filed in any civil action returnable to a geographical area of the superior court, an original and sufficient copies for each party to the action must be filed. This section shall not apply to appearances entered pursuant to Section 3-1.]

(b) Whenever an appearance is filed in summary process actions, the attorney for the defendant, or, if there is no such attorney, the defendant himself or herself, shall mail or deliver a copy of the appearance to the attorney for the plaintiff, or if there is no such attorney, to the plaintiff himself or herself.

(c) Whenever an appearance is filed in delinquency, family with service needs or youth in crisis proceedings, the attorney or GAL for the respondent, or for any other interested party, shall mail or deliver a copy of their appearance to the prosecutorial official and all other counsel and self-represented parties of record; in child protection proceedings, the attorney or GAL for the child, respondent, or any other interested party, shall mail or deliver a copy of their appearance to the attorney for the petitioner and to all other counsel and self-represented parties of record.

(d) Whenever an appearance is filed in criminal cases, the attorney for the defendant shall mail or deliver a copy of the appearance to the prosecuting authority.

COMMENTARY: The above revision shifts the obligation to provide notice of the filing of an appearance from the clerk's office to the party filing the appearance in many instances.

Sec. 3-5. Service of Appearances on Other Parties [—When Required]

[(a) In summary process actions the attorney for the defendant or, if there is no such attorney, the defendant himself or herself, in addition to complying with Section 3-4, shall mail or deliver a copy of the appearance to the attorney for the plaintiff or, if there is no such attorney, to the plaintiff himself or herself.

(b) In delinquency and family with service needs proceedings, such attorney shall mail or deliver a copy of the appearance to the juvenile prosecutor; in other juvenile proceedings, such attorney shall mail or deliver a copy of the appearance to the attorney for the petitioner and to all other attorneys and pro se parties.

(c) In criminal cases the attorney for the defendant shall mail or deliver a copy of the appearance to the prosecuting authority.

(d)] Service of [such] appearances shall be made in accordance with Sections 10-12 through 10-17. Proof of service shall be endorsed on the appearance filed with the clerk. This section shall not apply to appearances entered pursuant to Section 3-1.

COMMENTARY: The above revision reflects the consolidation of provisions regarding on whom copies of appearances must be served in section 3-4.

APPENDIX G (032111 mins)

Sec. 14-7. Trial List for Administrative Appeals; Briefs; Placing Cases Thereon

(a) Except as provided in subsections (b), (c) and (d) below, or except as otherwise permitted by the judicial authority in its discretion, in an administrative appeal, the record shall be filed [within the time prescribed by statute] as prescribed in Section 14-7B below or as otherwise prescribed by statute; the defendant's answer shall be filed within the time prescribed by Section 10-8; the plaintiff's brief shall be filed within thirty days after the filing of the defendant's answer or the return of the record, whichever is later; and the defendant's brief shall be filed within thirty days of the plaintiff's brief. No brief shall exceed thirty-five pages without permission of the judicial authority. A motion for extension of time within which to file the return of record, the answer, or any brief shall be made to the judicial authority before the due date of the filing which is the subject of the motion. The motion shall set forth the reasons therefor and shall contain a statement of the respective positions of the opposing parties with regard to the motion. The motion shall also state whether any previous motion for extension of time was made and the judicial authority's action thereon. If a party fails timely to file the record, answer, or brief in compliance with this subsection, the judicial authority may, on its own motion or on motion of one of the parties, and after hearing, make such order as the ends of justice require. Such orders may include but are not limited to the following or any combination thereof:

(1) An order that the party not in compliance pay the costs of the other parties, including a reasonable attorney's fees;

(2) If the party not in compliance is the plaintiff, an order dismissing the appeal;

(3) If the party not in compliance is a defendant, an order sustaining the appeal, an order remanding the case, or an order dismissing such defendant as a party to the appeal;

(4) If the board or agency has failed to file the record within the time permitted, an order allowing any other party to prepare and file a record of the administrative proceedings and an order that the board or agency pay the reasonable costs, including attorney's fees, of such party.

(b) Appeals from the employment security board of review shall follow the procedure set forth in chapter 22 of these rules.

(c) Workers' compensation appeals taken to the appellate court shall follow the procedure set forth in the Rules of Appellate Procedure.

(d) The following administrative appeals shall, subsequent to the filing of the appeal, follow the same course of pleading as that followed in ordinary civil actions:

(1) Appeals from municipal boards of tax review taken pursuant to General Statutes §§ 12-117a and 12-119.

(2) Appeals from municipal assessors taken pursuant to General Statutes § 12-103.

(3) Appeals from the commissioner of revenue services.

(4) Appeals from the insurance commissioner taken pursuant to General Statutes § 38a-139.

(5) Any other appeal in which the parties are entitled to a trial de novo.

(e) Administrative appeals are not subject to the pretrial rules, except as otherwise provided in [subsection (f)] Section 14-7B.

[(f) All cases properly on the trial list for administrative appeals shall be privileged in respect to assignment and may be subject to pretrial conferences in accordance with Sections 14-11 through 14-14.]

COMMENTARY: C.G.S. § 8-8(i) requires that "the record" shall be transmitted to the court within 30 days, but proposed new Section 14-7B breaks out the concept of "the record" into different tiers or steps. The revision to this section sets the stage for that by referencing the sections to follow. Subsection (f) repeats the language of C.G.S. § 8-8(m) and thus is redundant.

(NEW) Sec. 14-7B. Record in Administrative Appeals; Exceptions

(a) Except as provided in subsection (b), (c), and (d) of Section 14-7, or appeals taken pursuant to General Statutes § 4-183, for appeals from municipal land use, historic, and resource protection agencies, the board or agency shall transmit and file the record in accordance with this section. For the purposes of this Section 14-7B, the term "papers" shall include any and all documents, transcripts, exhibits, plans, minutes, agendas, correspondence, or other materials, regardless of format, which are part of the return of record described in General Statutes § 8-8(i), including additions to the record per § 8-8(k).

(b) Within thirty days of the return date, the board or agency shall transmit a certified list of the papers in the record to all parties, and shall make the existing listed

papers available for inspection by the parties.

(c) The first time that the appeal appears on the administrative appeals calendar, the court and the parties will establish, or will set up a conference to establish, which of the contents of the record are to be transmitted, and will set up a scheduling order, which will include dates for the filing of the designated contents of the record, for the submission of briefs and reply briefs, for pretrials or other appropriate conferences, and for the hearing on the administrative appeal. At the conference, the court shall also determine which, if any, of the designated contents of the record shall be transmitted to the parties and/or the court in paper format because such papers are either difficult to reproduce electronically or difficult to review in electronic format. Disputes about the contents of the records or other motions, applications or objections will be heard on the administrative appeals calendar or as otherwise scheduled by the Court. Any hearings to consider the taxation of costs in accordance with General Statute § 8-8(i) shall be conducted after the court renders its decision on the appeal.

(d) The board or agency shall transmit to the court and all parties (1) the certified list of papers in the record that was transmitted to the parties under subsection (b) of this section; and (2) certified copies of the designated contents of the record established in accordance with subsection (c).

(e) If any party seeks to include in such party's brief or appendices papers the party deems material to its claim or position, which were not part of the designated contents of the record determined under subsection (c) but were on the certified list filed in accordance with subsection (b), such party shall file an amendment to the record as of right attaching such papers. In the event such an amendment to the record as of right is filed, the scheduling order may be adjusted to provide either party with additional time to file a brief or reply brief.

(f) No party shall include in such party's brief or appendices, papers that were neither part of the designated contents of the record under subsection (c), nor on the certified list filed in accordance with subsection (b), unless the court grants permission to supplement the records with such papers pursuant to General Statutes § 8-8(k).

COMMENTARY: This rule is limited to appeals from municipal land use and resource protection agencies, and specifically excludes appeals under the UAPA or other types of appeals. The intent of the rule is to streamline the contents of the record that must be

reproduced for the parties and transmitted to the court, while assuring the parties of access to the full record for inspection. This results in more effective use of the court's time, substantial savings in producing the contents of the record on appeal for the municipalities, and increased electronic filing and viewing of documents. In lieu of transmitting the full record to the court, the board or agency transmits to the court and the parties a certified list of what the record contains together with the contents of the record designated by the parties and the court at a pretrial conference. The rule allows the parties to agree to shorten the record submitted to the court, while retaining the ability to cite to a document that is part of the certified list of papers in the record but was not submitted to the court, per stipulation. As already allowed under C.G.S. § 8-8(k), adding items to the record that were not on the list of record items requires a motion by a party and approval by the court and no documents may be cited without such approval.