

Minutes of the Meeting
Rules Committee
December 20, 2010

On Monday, December 20, 2010, the Rules Committee met in the Attorneys' Conference Room from 2:00 p.m. to 3:12 p.m.

Members in attendance were:

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

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

1. The Committee unanimously approved, with minor revisions, the minutes of the November 22, 2010, meeting.

2. The Committee continued its consideration of proposed rules concerning videoconferencing that were submitted by Judge Elliot N. Solomon on behalf of the Alternatives to Court Appearances Committee. At its last meeting the Rules Committee approved a proposal from Judge Solomon's Committee with regard to juvenile matters. At this meeting the Rules Committee considered a proposal by Judge Solomon's committee to amend Section 44-10A.

After discussion, the Rules Committee further revised the proposal and unanimously voted to submit to public hearing the revisions to Section 44-10A as set forth in Appendix A attached hereto.

3. The Committee considered proposed revisions to the Code of Evidence submitted by Judge Thomas A. Bishop, Chair of the Evidence Oversight Committee.

After discussion, the Committee further revised the proposals and voted, with Judge Prescott abstaining, to submit to public hearing the proposed revisions to the Code of Evidence

as set forth in Appendix B attached hereto.

4. The Committee considered a proposal submitted by Judge Pellegrino on behalf of the Civil Commission to amend the civil pleading rules; a letter from Attorney Edward Maum Sheehy to which he appends a proposed revision to the summary judgment rules; and a submission from Judges Corradino and Scholl concerning this matter.

After consideration, the Committee unanimously voted that no changes should be made as a result of the proposal. The Committee noted that it can ask for a new proposal on this topic in a couple of years.

5. The Committee considered the Uniform Interstate Depositions and Discovery Act submitted by Attorney David D. Biklen on behalf of the Uniform Law Commissioners.

After consideration, the Committee unanimously voted to take no action on the proposal.

6. The Committee considered a proposal submitted by the Connecticut Bar Association to amend Rule 6.1 of the Rules of Professional Conduct to require lawyers in this state to report, on an annual basis, the extent to which they have or have not provided pro bono legal services pursuant to that rule; and a report from Attorney Janes concerning this matter.

After consideration, the Committee unanimously denied the proposal.

7. The Committee considered a proposal by Attorney Daniel B. Horwitch to amend Section 17-20 in light of P.A. 10-181 concerning the foreclosure mediation program.

After consideration, the Committee unanimously voted to submit to public hearing the revision to Section 17- 20 as set forth in Appendix C attached hereto.

8. The Committee considered a proposal by Attorney Joseph Del Ciampo to amend Section 30-2a to correct statutory citations in that section.

After consideration, the Committee unanimously voted to submit to public hearing the revision to Section 30-2A as set forth in Appendix D attached hereto.

9. The Committee considered a letter from Attorney Kathleen B. Wood, Administrative Director of the Bar Examining Committee, requesting that the proposed revision to Section 2-5A that was recently approved by the Rules Committee for public hearing be given an expedited effective date if it is adopted by the judges at the Annual Meeting.

After consideration, the Committee unanimously voted to recommend to the Superior Court judges that, if they adopt the revision to Section 2-5A, the effective date be September 1, 2011.

10. Justice Zarella announced that this would be his last meeting as Chair of the Rules Committee. He gave a brief history of the Rules Committee since its creation in 1804 and reviewed the challenges faced by the Committee and its accomplishments during his tenure as Chair. He announced that Justice Dennis Eveleigh will succeed him as Chair of the Rules Committee.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carl E. Testo".

Carl E. Testo
Counsel to the Rules Committee

Attachments

APPENDIX A (122010 mins)

Sec. 44-10A. —Where Presence of Defendant May Be by Means of an Interactive Audiovisual Device

(a) Unless otherwise ordered by the judicial authority, and in the discretion of the judicial authority, a defendant may be present by means of an interactive audiovisual device for the following proceedings:

(1) Hearings concerning indigency pursuant to General Statutes § 52-259b;

(2) Hearings concerning asset forfeiture, unless the testimony of witnesses is required;

(3) Hearings regarding seized property, unless the testimony of witnesses is required;

(4) With the defendant's consent, bail modification hearings pursuant to Section 38-14; [and]

(5) [With the defendant's consent, s]Sentence review hearings pursuant to General Statutes § 51-195[.];

(6) With the consent of counsel, proceedings under General Statutes § 54-56d (k) if the evaluation under General Statutes § 54-56d (j) concludes that the defendant is not competent but is restorable and neither the state nor the defendant intends to contest that conclusion;

(7) A disposition conference held in the judicial district court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference; and

(8) With the consent of counsel, a disposition conference held in the geographical area court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference.

(b) Such audiovisual device must operate so that the defendant, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the defendant and his or her attorney can confer in private must be provided.

(c) Unless otherwise required by law or ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

(d) Nothing contained in this section shall be construed to establish a right for any person to appear by means of an interactive audiovisual device.

COMMENTARY: The amendments to this section are intended to broaden the application and use of interactive audiovisual devices. These changes are taken from the recommendations of the Alternatives to Court Appearances Committee of the Public Service and Trust Commission.

Subsection (a) (6) expands the use of video and teleconferencing to proceedings under General Statutes Section 54-56d where the defendant is not competent but whose competency may be restored. In such situations, where it is expected that the result of the hearing will be that the matter will be continued to allow for the restoration process to proceed, the defendant and mental health professionals may, by agreement, appear by video from the mental health facility. This section has been expanded to include hearings of this nature.

The change to subsection (a) (5) expands the use of videoconferencing in connection with Sentence Review Division hearings held pursuant to General Statutes § 51-195 et seq. Currently, in most instances, the defendant's physical presence is required at such hearings. One instance where such presence is clearly not required is pursuant to current Section 44-10A which provides that unless otherwise ordered by the Judicial Authority and in the discretion of the Judicial Authority a defendant may consent to being present at his or her Sentence Review Division hearing by means of an interactive audiovisual device. Another such instance is pursuant to General Statutes § 51-196(b), which provides that the Sentence Review Division may, for good cause, "waive its authority to increase the penalty [imposed] on the defendant and may, thereafter, conduct a hearing on . . . [the] application without the applicant being present." Nothing in this provision, however, "shall be construed to prohibit an applicant from having counsel present or from appearing pro se at the hearing."

A possible barrier to expanding the use of videoconferencing in Sentence Review Division hearings is that sentence review has been deemed to constitute "a critical stage of

the sentencing procedure,” and as such, may entitle the applicant to be physically present at the hearing on such review. *Consiglio v. Warden*, 153 Conn. 673, 677 (1966); *State v. Reyes*, 19 Conn. App. 695 (1989). Whether the applicant’s presence by way of video is sufficient to satisfy the applicant’s right to be present, appears to be a matter of degree. Some state courts have allowed video hearings to take place during critical stages of a trial and others have not. See *Constitutional and Statutory Validity of Judicial Videoconferencing*, 115 ALR5th 509 (2005). Where crucial aspects of a defendant’s physical presence such as demeanor, facial expressions and vocal inflections may be lost or misinterpreted in a televised appearance, proceeding on video may not be appropriate. *Id.*

The function of the Sentence Review Division is to afford a convicted person a limited appeal for reconsideration of that person’s sentence. *State v. Spells*, 76 Conn. App. 67 (2003). The scope of review of the division is to “review the sentence imposed and determine whether the sentence should be modified because it is inappropriate or disproportionate in light of the nature of the offense, the character of the offender, the protection of the public interest, and the deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence was intended.” Practice Book Section 43-28. It is suggested that the Division’s function can be achieved by allowing the applicant’s presence at the Sentence Review Division hearing by way of an interactive audiovisual device and that such appearance will not violate the defendant’s right to be present at the hearing.

The above changes also allow videoconferencing technology to be used when the individual is called back to court for a “disposition conference” held pursuant to Sections 39-11 through 39-17.

APPENDIX B (122010) mins

Sec. 1-1. Short Title; Application

(a) **Short title.** These rules shall be known and may be cited as the Code of Evidence. The Code of Evidence is hereinafter referred to as the "Code."

(b) **Application of the Code.** The Code applies to all proceedings in the superior court in which facts in dispute are found, except as otherwise provided by the Code, the General Statutes or the Practice Book.

(c) **Rules of privilege.** Privileges shall apply at all stages of all proceedings in the court.

(d) **The Code inapplicable.** The Code, other than with respect to privileges, does not apply in proceedings such as, but not limited to, the following:

(1) Proceedings before investigatory grand juries, as provided for in General Statutes §§ 54-47b through 54-47f.

(2) Proceedings involving questions of fact preliminary to admissibility of evidence pursuant to Section 1-3 of the Code.

(3) Proceedings involving sentencing.

(4) Proceedings involving probation.

(5) Proceedings involving small claims matters.

(6) Proceedings involving summary contempt.

COMMENTARY

(b) Application of the Code.

The Connecticut Code of Evidence was adopted by the Judges of the Superior Court. In *State v. DeJesus*, 288 Conn. 418, 953 A.2d 45 (2008), the Connecticut Supreme Court held that it is not bound by a code adopted by the Judges of the Superior Court. The Code is broadly applicable. The Code applies to all civil and criminal bench or jury trials in the superior court. The Code applies, for example, to the following proceedings:

(1) court-ordered fact-finding proceedings conducted pursuant to General Statutes § 52-549n and Practice Book § 23-53; see General Statutes § 52-549r;

(2) probable cause hearings conducted pursuant to General Statutes § 54-46a excepting certain matters exempted under General Statutes § 54-46a (b); see *State v. Conn.*, 234

Conn. 97, 110, 662 A.2d 68 (1995); *In re Ralph M.*, 211 Conn. 289, 305-306, 559 A.2d 179 (1989);

(3) juvenile transfer hearings conducted pursuant to General Statutes § 46b-127 as provided in subsection (b) of that provision; *In re Michael B.*, 36 Conn. App. 364, 381, 650 A.2d 1251 (1994); *In re Jose M.*, 30 Conn. App. 381, 384-85, 620 A.2d 804, cert. denied, 225 Conn. 921, 625 A.2d 821 (1993);

(4) juvenile proceedings; however, adoption of subsection (b) is not intended to abrogate the well established rule that the court may relax its strict application of the formal rules of evidence to reflect the informal nature of juvenile proceedings provided the fundamental rights of the parties are preserved; *In re Juvenile Appeal (85-2)*, 3 Conn. App. 184, 190, 485 A.2d 1362 (1986); see *Anonymous v. Norton*, 168 Conn. 421, 425, 362 A.2d 532, cert. denied, 423 U.S. 925, 96 S.Ct. 294, 46 L.Ed.2d 268 (1975); Practice Book § 34-2(a); and

(5) proceedings involving family relations matters enumerated under General Statutes § 46b-1. Because the Code is applicable only to proceedings in the court, the Code does not apply to:

(1) matters before probate courts; see *Prince v. Sheffield*, 158 Conn. 286, 293, 259 A.2d 621 (1968); although the Code applies to appeals from probate courts that are before the court in which a trial de novo is conducted; see *Thomas v. Arefeh*, 174 Conn. 464, 470, 391 A.2d 133 (1978); and

(2) administrative hearings conducted pursuant to General Statutes § 4-176e; see General Statutes § 4-178; *Jutkowitz v. Dept. of Health Services*, 220 Conn. 86, 108, 596 A.2d 394 (1991); *Lawrence v. Kozlowski*, 171 Conn. 705, 710, 372 A.2d 110 (1976), cert. denied, 431 U.S. 969, 97 S.Ct. 2930, 53 L.Ed.2d 1066 (1977); or administrative hearings conducted by agencies that are exempt from the Uniform Administrative Procedure Act, General Statutes §§ 4-166 through 4-189.

An example of a provision within subsection (b)'s "except as otherwise provided" language is Practice Book § 23-12, which states that the court "shall not be bound by the technical rules of evidence" when trying cases placed on the expedited process track pursuant to General Statutes § 52-195b.

The Code is not intended to apply to matters to which the technical rules of evidence traditionally have not applied. Thus, for example, the Code would be inapplicable to hearings on the issuance of bench warrants of arrest or search warrants conducted pursuant to General Statutes §§ 54-2a and 54-33a, respectively; see *State v. DeNegris*, 153 Conn. 5, 9, 212 A.2d 894 (1965); *State v. Caponigro*, 4 Conn. Cir.Ct. 603, 609, 238 A.2d 434 (1967).

Matters to which the Code specifically is inapplicable are set forth in subsection (d).

(c) Rules of privilege.

Subsection (c) addresses the recognition of evidentiary privileges only with respect to proceedings in the court. It does not address the recognition of evidentiary privileges in any other proceedings outside the court, whether legislative, administrative or quasi-judicial, in which testimony may be compelled.

(d) The Code inapplicable.

Subsection (d) specifically states the proceedings to which the Code, other than with respect to evidentiary privileges, is inapplicable. The list is intended to be illustrative rather than exhaustive and subsection (d) should be read in conjunction with subsection (b) in determining the applicability or inapplicability of the Code. The removal of these matters from the purview of the Code generally is supported by case law, the General Statutes or the Practice Book. They include:

(1) proceedings before investigatory grand juries; e.g., *State v. Avcollie*, 188 Conn. 626, 630-31, 453 A.2d 418 (1982), cert. denied, 461 U.S. 928, 103 S.Ct. 2088, 77 L.Ed.2d 299 (1983);

(2) preliminary determinations of questions of fact by the court made pursuant to Section 1-3 (a); although there is no Connecticut authority specifically stating this inapplicability, it is generally the prevailing view. E.g., Fed.R.Evid. 104(a); Unif.R.Evid. 104(a), 13A U.L.A. 93-94 (1994); 1 C. McCormick, *Evidence* (5th Ed. 1999) § 53, p. 234;

(3) sentencing proceedings; e.g., *State v. Huey*, 199 Conn. 121, 126, 505 A.2d 1242 (1986);

(4) hearings involving the violation of probation conducted pursuant to General Statutes § 53a-32 (a); *State v. White*, 169 Conn. 223, 239-40, 363 A.2d 143, cert. denied, 423 U.S. 1025, 96 S.Ct. 469, 46 L.Ed.2d 399 (1975); *In re Marius M.*, 34 Conn. App. 535, 536, 642 A.2d 733 (1994);

(5) proceedings involving small claims matters; General Statutes § 52-549c (a); see Practice Book § 24-23; and

(6) summary contempt proceedings; see generally Practice Book § 1-16.

Nothing in subdivision (1) abrogates the common-law rule that in determining preliminary questions of fact upon which the application of certain exceptions to the hearsay rule depends, the court may not consider the declarant's out-of-court statements themselves in determining those preliminary questions. E.g., *State v. Vessichio*, 197 Conn. 644, 655, 500 A.2d 1311 (1985), cert. denied, 475 U.S. 1122, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986) (court may not consider coconspirator statements in determining

preliminary questions of fact relating to admissibility of those statements under coconspirator statement exception to hearsay rule; see Section 8-3 [1] [D]); *Robles v. Lavin*, 176 Conn. 281, 284, 407 A.2d 958 (1978) (in determining whether authorized admissions against party opponent exception to hearsay rule applies, authority to speak must be established before alleged agent's declarations can be introduced; see Section 8-3 [1] [C]); *Ferguson v. Smazer*, 151 Conn. 226, 231, 196 A.2d 432 (1963) (in determining whether hearsay exception for statements of pedigree and family relationships applies, declarant's relationship to person to whom statement relates must be established without reference to declarant's statements; see Section 8-6 [7]).

Sec. 4-5 Evidence of Other Crimes, Wrongs or Acts Generally Inadmissible [to Prove Character Admissible for Other Purposes; Specific Instances of Other Conduct].

(a) **[Evidence of other crimes, wrongs or acts inadmissible to prove character].**General Rule Evidence of other crimes, wrongs or acts of a person is inadmissible to prove the bad character, propensity, or criminal tendencies of that person except as provided in subsection (b):

(b) **When evidence of other sexual misconduct is admissible to prove propensity.** Evidence of other sexual misconduct is admissible in a criminal case to establish that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual misconduct if: (1) the case involves aberrant and compulsive sexual misconduct; (2) the trial court finds that the evidence is relevant to a charged offense in that the other sexual misconduct is not too remote in time, was allegedly committed upon a person similar to the alleged victim, and was otherwise similar in nature and circumstances to the aberrant and compulsive sexual misconduct at issue in the case; and (3) the trial court finds that the probative value of the evidence outweighs its prejudicial effect.

(c) **When evidence of other crimes, wrongs or acts is admissible.** Evidence of other crimes, wrongs or acts of a person is admissible for purposes other than those specified in subsection (a), such as to prove intent, identity, malice, motive, common plan or scheme, absence of mistake or accident, knowledge, a system of criminal activity, or an element of the crime, or to corroborate crucial prosecution testimony.

[(c)](d) Specific instances of conduct when character in issue. In cases in which character or a trait of character of a person in relation to a charge, claim or

defense is in issue, proof shall be made by evidence of specific instances of the person's conduct.

COMMENTARY: (a) Evidence of other crimes, wrongs or acts generally inadmissible [to prove character].

Subsection (a) is consistent with Connecticut common law. E.g., *State v. Santiago*, 224 Conn. 325, 338, 618 A.2d 32 (1992); *State v. Ibraimov*, 187 Conn. 348, 352, 446 A.2d 332 (1982). Other crimes, wrongs or acts evidence may be admissible for other purposes as specified in subsections (b) and (c). Although the issue typically arises in the context of a criminal proceeding; see *State v. McCarthy*, 179 Conn. 1, 22, 425 A.2d 924 (1979); subsection (a)'s exclusion applies in both criminal and civil cases. See, e.g., *Russell v. Dean Witter Reynolds, Inc.*, 200 Conn. 172, 191–92, 510 A.2d 972 (1986).

(b) When evidence of other sexual misconduct is admissible to prove propensity.

Subsection (a) specifically prohibits the use of other crimes, wrongs or acts evidence to prove a person's propensity to engage in the misconduct with which the defendant has been charged. However, the court may admit evidence of a defendant's uncharged sexual misconduct to prove that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual behavior; *State v. DeJesus*, 288 Conn. 418 (2008); *State v. Snelgrove*, 288 Conn. 742 (2008); *State v. Johnson*, 289 Conn. 437 (2008). Although *State v. DeJesus* involved a sexual assault charge, later, the Supreme Court, in *State v. Snelgrove*, made it clear that the *DeJesus* propensity rule is not limited to cases in which the defendant is charged with a sex offense. In *State v. Snelgrove*, the court stated: "We conclude that this rationale for the exception to the rule barring propensity

evidence applies whenever the evidence establishes that both the prior misconduct and the offense with which the defendant is charged were driven by an aberrant sexual compulsion, regardless of whether the prior misconduct or the conduct at issue resulted in sexual offense charges.” 288 Conn. 760. The admission of the evidence of a defendant’s uncharged sexual misconduct to prove that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual behavior should be accompanied by an appropriate cautionary instruction limiting the purpose for which it may properly be used. *State v. DeJesus, supra* at 474.

(c) When evidence of other crimes, wrongs or acts is admissible.

Subsection (a) specifically prohibits the use of other crimes, wrongs or acts evidence to prove a person’s bad character or criminal tendencies. Subsection ([b]c) however, authorizes the court, in its discretion, to admit other crimes, wrongs or acts evidence for other purposes, such as to prove:

- (1) intent; e.g., *State v. Lizzi*, 199 Conn. 462, 468–69, 508 A.2d 16 (1986);
- (2) identity; e.g., *State v. Pollitt*, 205 Conn. 61, 69, 530 A.2d 155 (1987);
- (3) malice; e.g., *State v. Barlow*, 177 Conn. 391, 393, 418 A.2d 46 (1979);
- (4) motive; e.g., *State v. James*, 211 Conn. 555, 578, 560 A.2d 426 (1989);
- (5) a common plan or scheme; e.g., *State v. Morowitz*, 200 Conn. 440, 442–44, 512 A.2d 175 (1986);
- (6) absence of mistake or accident; e.g., *State v. Tucker*, 181 Conn. 406, 415–16, 435 A.2d 986 (1980);
- (7) knowledge; e.g., *State v. Fredericks*, 149 Conn. 121, 124, 176 A.2d 581 (1961);

(8) a system of criminal activity; e.g., *State v. Vessichio*, 197 Conn. 644, 664–65, 500 A.2d 1311 (1985), cert. denied, 475 U.S. 1122, 106 S. Ct. 1642, 90 L. Ed. 2d 187 (1986);

(9) an element of the crime [charged]; e.g., *State v. Jenkins*, 158 Conn. 149, 152–53, 256 A.2d 223 (1969); or

(10) to corroborate crucial prosecution testimony; e.g., *State v. Mooney*, 218 Conn. 85, 126–27, 588 A.2d 145, cert. denied, 502 U.S. 919, 112 S. Ct. 330, 116 L. Ed. 2d 270 (1991).

Admissibility of other crimes, wrongs or acts evidence is contingent on satisfying the relevancy standards and balancing test set forth in Sections 4-1 and 4-3, respectively. For other crimes, wrongs or acts evidence to be admissible, the court must determine that the evidence is probative of one or more of the enumerated purposes for which it is offered, and that its probative value [is not outweighed by] outweighs its prejudicial effect. E.g., *State v. Figueroa*, 235 Conn. 145, 162, 665 A.2d 63 (1995); *State v. Cooper*, 227 Conn. 417, 425–28, 630 A.2d 1043 (1993). The purposes enumerated in subsection ([b] c) for which other crimes, wrongs or acts evidence may be admitted are intended to be illustrative rather than exhaustive. Neither subsection (a) nor subsection ([b] c) precludes a court from recognizing other appropriate purposes for which other crimes, wrongs or acts evidence may be admitted, provided the evidence is not introduced to prove a person’s bad character or criminal tendencies, and the probative value of its admission is not outweighed by any of the Section 4-3 balancing factors.

[(c] d) Specific instances of conduct when character in issue.

Subsection (c) d finds support in Connecticut case law. See *State v. Miranda*, 176 Conn. 107, 112, 365 A.2d 104 (1978); *Norton v. Warner*, 9 Conn. 172, 174 (1832).

APPENDIX C (122010) mins

Sec. 17-20. Motion for Default and Nonsuit for Failure to Appear (as amended effective 1/1/11)

(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] 2012, 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 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.

COMMENTARY: The amendment to subsection (b) reflects the extension of the foreclosure mediation program by P.A. 10-181.

APPENDIX D (122010) mins

Sec. 30-2A. Family with Service Needs and Detention

(a) No child who has been adjudicated as a child from a family with service needs in accordance with General Statutes § 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as a delinquent, solely for the violation of a valid order which regulates future conduct of the child that was issued by the court following such an adjudication, and no such child who is charged or found to be in violation of any such order may be ordered detained in any juvenile detention center.

(b) No nondelinquent juvenile runaway from another state may be held in a juvenile detention center in accordance with the provisions of General Statutes § [46b-151 to 46b-151g inclusive] 46b-151h.

COMMENTARY: The above change is made to update the statutory citations in subsection (b).