NOTICE

Public Hearing on Practice Book Revisions Being Considered by the Rules Committee of the Superior Court

On May 14, 2018, at 10:00 a.m., the Rules Committee of the Superior Court will conduct a public hearing in the Supreme Court courtroom in Hartford for the purpose of receiving comments concerning Practice Book revisions that are being considered by the Committee. The revisions proposed by the Rules Committee follow this notice and are posted on the Judicial Branch website at http://www.jud.ct.gov/pb.htm.

Pursuant to subsection (c) of section 51-14 of the Connecticut General Statutes, the Supreme Court has designated the Rules Committee to conduct this public hearing also for the purpose of receiving comments on any proposed new rule or any change in an existing rule that any member of the public deems desirable.

Comments may be forwarded to the Rules Committee by email at Joseph.DelCiampo@jud.ct.gov or may be forwarded to the Rules Committee at the following address and should be received by May 10, 2018:

Rules Committee of the Superior Court
Attn: Joseph J. Del Ciampo, Counsel
P.O. Box 150474
Hartford, CT 06115-0474

Each speaker at the public hearing will be limited to five minutes. Anyone who believes that they cannot cover their remarks within that time period may submit written comments to the Rules Committee. If written comments are submitted, ten copies should be provided.

Wheelchair access is located in the rear of the building, accessible from the staff parking lot between Lafayette and Oak Streets. There are a limited number of handicap parking spots in the gated staff lot, which is accessible from Oak Street. Use the intercom at the gate to speak to security about the availability of parking. Once at the accessible door, use the intercom to request entry from security. If you would like to attend the meeting and need an accommodation under the Americans with Disabilities Act, please email the Rules Committee at Joseph.DelCiampo@jud.ct.gov before May 10, 2018.

Hon. Richard A. Robinson
Chair, Rules Committee

INTRODUCTION

Contained herein are amendments that are being considered to the Practice Book. These amendments are indicated by brackets for deletions and underlines for added language. The designation ''NEW'' is printed with the title of each proposed new rule.

Rules Committee of the
Superior Court

PROPOSED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9 (c); and (2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under subsection (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule,

the term ''confidential government information'' means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) Is subject to Rules 1.7 and 1.9; and (2) Shall not:

(i) Participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) Negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially; except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12 (b) and subject to the conditions stated in Rule 1.12 (b).

(e) Grievance counsel, disciplinary counsel and bar counsel as well as members of the statewide grievance committee and grievance panels shall not represent any party other than the state with respect to an unauthorized practice of law complaint or attorney grievance

matter, while serving as such. In addition, such counsel and members shall not represent an individual or entity investigated or prosecuted for the unauthorized practice of law or an attorney investigated or prosecuted with respect to an attorney grievance matter if that specific unauthorized practice of law complaint or attorney grievance matter was pending in their office or with their committee or panel at the time of such counsel's or member's termination of employment or service as such grievance counsel, disciplinary counsel, bar counsel or member of the statewide grievance committee or a grievance panel.

[(e)**]** (f) As used in this Rule, the term ''matter'' includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

COMMENTARY: A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0 (f) for the definition of informed consent.

Subsections (a) (1), (a) (2) and (d) (1) restate the obligations of an individual lawyer who has served or is currently serving as an officer

or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, subsection (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, subsection (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Subsections (a) (2) and (d) (2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under subsection (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by subsection (d). As with subsections (a) (1) and (d) (1), Rule 1.10 is not applicable to the conflicts of interest addressed by these subsections.

This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client

might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary, obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in subsection (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in subsections (a) (2) and (d) (2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by subsection (d), the latter agency is not required to screen the lawyer as subsection (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same

or different clients for conflict of interest purposes is beyond the scope of these Rules. See Commentary to Rule 1.13.

Subsections (b) and (c) contemplate a screening arrangement. See Rule 1.0 (*l*) (requirements for screening procedures). These subsections do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Subsection (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Subsections (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

For purposes of subsection (e), an ''unauthorized practice of law complaint'' means a complaint alleging conduct covered by General Statutes § 51-88. ''Attorney grievance matter'' means any grievance complaint, investigation, presentment, interim suspension, disability, resignation, reinstatement, reciprocal discipline, discipline following a finding of guilt of a serious crime or inactive status matter.

For purposes of subsection **[**(e)**]**(f) of this Rule, a ''matter'' may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

AMENDMENT NOTE: The reason for the amendment to this provision is to establish rules to avoid conflicts of interest and appearances of such conflicts by those engaged in the disciplinary process. Currently, the subsection does not prohibit a grievance counsel, bar counsel or committee member from appearing before a local grievance panel or the statewide grievance committee while he or she continues to serve as counsel or a panel member. The proposal also will prohibit individuals involved in the disciplinary process from representing someone with respect to a matter that was pending in their office or before their committee at the time that they terminated their employment or service.

The provisions of subsection (e) should be prospective to the extent that it would only apply to those who held a position subject to its terms on the date the amendment becomes effective. As a result, if a current member of the statewide grievance committee wished to be exempt from this provision, he or she could resign prior to the effective date of the amendment to Rule 1.11 taking effect. The prospective effect of this provision would be analogous to the prospective effect of Practice Book Section 2-47B adopted in 2015, which imposed restrictions on the activities of deactivated attorneys, but only applied

to attorneys who were deactivated on or after January 1, 2016, the effective date of the rule.

Rule 2.11. Disqualification

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(A) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) acting as a lawyer in the proceeding;

(C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to

commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(B) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(C) was a material witness concerning the matter.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a) (1), may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification, provided that the judge shall disclose on the record the basis of such disqualification. If, following the disclosure, the parties and lawyers agree, either in writing or on the record before another judge, that the judge should not be disqualified, the judge may participate in the proceeding. (d) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such contribution will

not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary proceeding or in any matter concerning restitution or subrogation relating to such a client security fund.

(e) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the judicial review council or an administrative agency. When the judge becomes aware pursuant to Practice Book Sections 1-22 (b) or 4-8 or otherwise that such a lawsuit or complaint has been filed against him or her, the judge shall, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge, and the judge shall thereafter proceed in accordance with Practice Book Section 1-22 (b).

(f) The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge's judicial duties shall not be the sole basis for recusal by the judge in lawsuits where the attorney general appears. (Effective Jan. 1, 2011.)

COMMENT: (1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a) (1) through (5) apply. In many jurisdictions, the term ''recusal'' is used interchangeably with the term ''disqualification.''

(2) A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

(3) The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required.

(5) The Rule does not prevent a judge from relying on personal knowledge of historical or procedural facts acquired as a result of presiding over the proceeding itself.

(6) Subsection (d) is intended to make clear that the restrictions imposed by *Dacey* v. *Connecticut Bar Assn.*, 184 Conn. 21, 441 A.2d 49 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.

AMENDMENT NOTE: Comment (7) to Rule 2.11 was adopted by the judges of the appellate court on July 15, 2010, and the justices of the supreme court on July 1, 2010. It was not, however, adopted by the judges of the superior court.

(7) A justice of the supreme court or a judge of the appellate court is not disqualified from sitting on a proceeding merely because he or she previously practiced law with the law firm or attorney who filed an amicus brief in the matter, or the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with such law firm or attorney.

AMENDMENT NOTE 2018: The purpose of the amendments to this Rule and to Section 1-22, and the adoption of new Section 4-8 is to place an affirmative obligation on the attorneys and parties who have filed a complaint or lawsuit against a judicial authority to give notice of those filings so that the judicial authority is alerted and can proceed in accordance with the appropriate ethical and procedural responsibilities.

PROPOSED AMENDMENTS TO THE GENERAL PROVISIONS OF THE SUPERIOR COURT RULES

Sec. 1-22. Disqualification of Judicial Authority

(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency of any warrant the judicial authority issued nor may the

judicial authority sit in appellate review of a judgment or order originally rendered by such authority.

(b) A judicial authority is not automatically disqualified from sitting on a proceeding merely because an attorney or party to the proceeding has filed a lawsuit against the judicial authority or filed a complaint against the judicial authority with the judicial review council or an administrative agency. When **[**the judicial authority has been made aware of the filing of such lawsuit or complaint,**]** such an attorney or party appears before the judicial authority, he or she shall so advise the judicial authority and other attorneys and parties to the proceeding on the record, and, thereafter, the judicial authority shall either disqualify himself or herself from sitting on the proceeding, conduct a hearing on the disqualification issue before deciding whether to disqualify himself or herself or refer the disqualification issue to another judicial authority for a hearing and decision.

COMMENTARY: The purpose of the amendments to this section and to Rule 2.11 of the Code of Judicial Conduct, and the adoption of New Section 4-8 is to place an affirmative obligation on the attorneys and parties who have filed a complaint or lawsuit against a judicial authority to give notice of those filings so that the judicial authority is alerted and can proceed in accordance with their ethical and procedural responsibilities.

Sec. 2-8. Qualifications for Admission

To entitle an applicant to admission to the bar, except under Sections 2-13 through 2-15 of these rules, the applicant must satisfy the committee that:

(1) The applicant is a citizen of the United States or an alien lawfully residing in the United States, which shall include an individual authorized to work lawfully in the United States.

(2) The applicant is not less than eighteen years of age.

(3) The applicant is a person of good moral character, is fit to practice law, and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee. Any inquiries or procedures used by the bar examining committee that relate to physical or mental disability must be narrowly tailored and necessary to a determination of the applicant's current fitness to practice law, in accordance with the Americans with Disabilities Act and amendment twenty-one of the Connecticut constitution, and conducted in a manner consistent with privacy rights afforded under the federal and state constitutions or other applicable law.

(4) The applicant has met the educational requirements as may be set, from time to time, by the bar examining committee.

(5) The applicant has filed with the administrative director of the bar examining committee an application to take the examination and for admission to the bar, all in accordance with these rules and the regulations of the committee, and has paid such application fee as the committee shall from time to time determine.

(6) The applicant has passed an examination in law in accordance with the regulations of the committee.

(7) The applicant has complied with all of the pertinent rules and regulations of the committee.

(8) As an alternative to satisfying the committee that the applicant has met the committee's educational requirements, the applicant who meets all the remaining requirements of this section may, upon payment of such investigation fee as the committee shall from time to time determine, substitute proof satisfactory to the committee that: (A) the applicant has been admitted to practice before the highest court of original jurisdiction in one or more states, the District of Columbia or the commonwealth of Puerto Rico or in one or more district courts of the United States for ten or more years and at the time of filing the application is a member in good standing of such a bar; (B) the applicant has actually practiced law in such a jurisdiction for not less than five years during the seven year period immediately preceding the filing date of the application; and (C) the applicant intends, upon a continuing basis, actively to practice law in Connecticut and to devote the major portion of the applicant's working time to the practice of law in Connecticut.

COMMENTARY: The primary intent of the change to this section is to clarify that status as a Deferred Action for Childhood Arrivals (DACA) beneficiary meets the first qualification for admission to the Connecticut Bar, that is, that the applicant is a citizen or alien lawfully residing in the United States.

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

(a) Any member of the bar of another state or territory of the United States or the District of Columbia, who, after satisfying the state bar

examining committee that his or her educational qualifications are such as would entitle him or her to take the examination in Connecticut, and that (i) at least one jurisdiction in which he or she is a member of the bar is reciprocal to Connecticut in that it would admit a member of the bar of Connecticut to its bar without examination under provisions similar to those set out in this section or (ii) he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction, shall satisfy the state bar examining committee that he or she (1) is of good moral character, is fit to practice law, and has either passed an examination in professional responsibility administered under the auspices of the bar examining committee or has completed a course in professional responsibility in accordance with the regulations of the bar examining committee; (2) has been duly licensed to practice law before the highest court of a reciprocal state or territory of the United States or in the District of Columbia if reciprocal to Connecticut, or that he or she is a full-time faculty member or full-time clinical fellow at an accredited Connecticut law school and admitted in a reciprocal or nonreciprocal jurisdiction and (A) has lawfully engaged in the practice of law as the applicant's principal means of livelihood for at least five of the ten years immediately preceding the date of the application and is in good standing, or (B) if the applicant has taken the bar examinations of Connecticut and failed to pass them, the applicant has lawfully engaged in the practice of law as his or her principal means of livelihood for at least five of the ten years immediately preceding the date of the application and is in good standing, provided

that such five years of practice shall have occurred subsequent to the applicant's last failed Connecticut examination; (3) is a citizen of the United States or an alien lawfully residing in the United States, which shall include an individual authorized to work lawfully in the United States; (4) intends, upon a continuing basis, to practice law actively in Connecticut, may be admitted by the court as an attorney without examination upon written application and the payment of such fee as the examining committee shall from time to time determine, upon compliance with the following requirements: Such application, duly verified, shall be filed with the administrative director of the bar examining committee and shall set forth the applicant's qualifications as hereinbefore provided. There shall be filed with such application the following affidavits: Affidavits from two attorneys who personally know the applicant certifying to his or her good moral character and fitness to practice law and supporting, to the satisfaction of the state bar examining committee, his or her practice of law as defined under (2) of this subsection; affidavits from two members of the bar of Connecticut of at least five years' standing, certifying that the applicant is of good moral character and is fit to practice law; and an affidavit from the applicant, certifying whether such applicant has a grievance pending against him or her, has ever been reprimanded, suspended, placed on inactive status, disbarred, or has ever resigned from the practice of law, and, if so, setting forth the circumstances concerning such action. Such an affidavit is not required if it has been furnished as part of the application form prescribed by the state bar examining committee.

(b) For the purpose of this rule, the ''practice of law'' shall include the following activities, if performed after the date of the applicant's admission to the jurisdiction in which the activities were performed, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice:

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

(2) service as a lawyer with a state, federal, or territorial agency, including military services;

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

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

(5) service as a judicial law clerk;

(6) service as authorized house counsel;

(7) service as authorized house counsel in Connecticut before July 1, 2008, or while certified pursuant to Section 2-15A; or

(8) any combination of the above.

COMMENTARY: The primary intent of the change to this section is to clarify that status as a Deferred Action for Childhood Arrivals (DACA) beneficiary meets the first qualification for admission to the Connecticut Bar, that is, that the applicant is a citizen or alien lawfully residing in the United States.

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 by Rule 1.15 of the Rules of Professional Conduct for a period of seven years after termination of the representation.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to 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. 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 nonpublic 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. In addition, the trust account identification numbers on the registration forms filed pursuant to Section 2-26 and this section shall be available to the organization designated by the judges of the superior court to administer the IOLTA program pursuant to Rule 1.15 of the Rules of Professional Conduct. The registration requirements of this subsection shall not apply to judges of the supreme, appellate or superior courts, judge trial referees, family sup-

port 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 Rule 1.15 of the Rules of Professional Conduct to determine whether such accounts are in compliance with the Rule and this section. 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 change to this section makes IOLTA trust account information available to the organization designated by the judges of the superior court to administer the IOLTA program. This change will improve the ability to ensure compliance with Rule 1.15 regarding IOLTA accounts.

Sec. 2-27A. Minimum Continuing Legal Education

(a) On an annual basis, each attorney admitted in Connecticut shall certify, on the registration form required by Section 2-27 (d), that the attorney has completed in the last calendar year no less than twelve credit hours of appropriate continuing legal education, at least two hours of which shall be in ethics/professionalism. The ethics and professionalism components may be integrated with other courses. This rule shall apply to all attorneys except the following:

(1) Judges and senior judges of the supreme, appellate or superior courts, judge trial referees, family support magistrates, family support magistrate referees, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges;

(2) Attorneys who are disbarred, resigned pursuant to Section 2-52, on inactive status pursuant to Section 2-56 et seq., or retired pursuant to Sections 2-55 or 2-55A;

(3) Attorneys who are serving on active duty in the armed forces of the United States for more than six months in such year;

(4) Attorneys for the calendar year in which they are admitted;

(5) Attorneys who earn less than $1000 in compensation for the provision of legal services in such year;

(6) Attorneys who, for good cause shown, have been granted temporary or permanent exempt status by the statewide grievance committee.

(b) Attorneys may satisfy the required hours of continuing legal education:

(1) By attending legal education courses provided by any local, state or special interest bar association in this state or regional or national bar associations recognized in this state or another state or territory of the United States or the District of Columbia (hereinafter referred to as ''bar association''); any private or government legal employer; any court of this or any other state or territory of the United States or the District of Columbia; any organization whose program or course has been reviewed and approved by any bar association or organization that has been established in any state or territory of the United States or the District of Columbia to certify and approve continuing legal education courses; and any other nonprofit or for-profit legal education providers, including law schools and other appropriate continuing legal education providers, and including courses remotely pre-

sented by video conference, webcasts, webinars, or the like by said providers.

(2) By self-study of appropriate programs or courses directly related to substantive or procedural law or related topics, including professional responsibility, legal ethics, or law office management and prepared by those continuing legal education providers in subsection (b) (1). Said selfstudy may include viewing and listening to all manner of communication, including, but not limited to, video or audio recordings or taking online legal courses. The selection of self-study courses or programs shall be consistent with the objective of this rule, which is to maintain and enhance the skill level, knowledge, ethics and competence of the attorney and shall comply with the minimum quality standards set forth in subsection (c) (6).

(3) By publishing articles in legal publications that have as their primary goal the enhancement of competence in the legal profession, including, without limitation, substantive and procedural law, ethics, law practice management and professionalism.

(4) By teaching legal seminars and courses, including the participation on panel discussions as a speaker or moderator.

(5) By serving as a full-time faculty member at a law school accredited by the American Bar Association or approved by the Connecticut Bar Examining Committee, in which case, such attorney will be credited with meeting the minimum continuing legal education requirements set forth herein.

(6) By serving as a part-time or adjunct faculty member at a law school accredited by the American Bar Association or approved by

the Connecticut Bar Examining Committee, in which case, such attorney will be credited with meeting the minimum continuing legal education requirements set forth herein at the rate of one hour for each hour of classroom instruction and one hour for each two hours of preparation.

(7) By serving as a judge or coach for a moot court or mock trial course or competition that is part of the curriculum at or sanctioned by a law school accredited by the American Bar Association or approved by the Connecticut Bar Examining Committee.

(c) Credit Computation:

(1) Credit for any of the above activities shall be based on the actual instruction time, which may include lecture, panel discussion, and question and answer periods. Credit for the activity listed in subsection (b) (7) shall be based upon the actual judging or coaching time, up to four hours for each activity per year. Self-study credit shall be based on the reading time or running time of the selected materials or program.

(2) Credit for attorneys preparing for and presenting legal seminars, courses or programs shall be based on one hour of credit for each two hours of preparation. A maximum of six hours of credit may be credited for preparation of a single program.

Credit for presentation shall be on an hour for hour basis. Credit may not be earned more than once for the same course given during a **[**twelve month period**]** calendar year.

(3) Credit for the writing and publication of articles shall be based on the actual drafting time required. Each article may be counted only one time for credit.

(4) Continuing legal education courses ordered pursuant to Section 2-37 (a) (5) or any court order of discipline shall not count as credit toward an attorney's obligation under this section.

(5) Attorneys may carry forward no more than two credit hours in excess of the current annual continuing legal education requirement to be applied to the following year's continuing legal education requirement.

(6) To be eligible for continuing legal education credit, the course or activity must: (A) have significant intellectual or practical content designed to increase or maintain the attorney's professional competence and skills as a lawyer; (B) constitute an organized program of learning dealing with matters directly related to legal subjects and the legal profession; and (C) be conducted by an individual or group qualified by practical or academic experience.

(d) Attorneys shall retain records to prove compliance with this rule for a period of seven years. (e) Violation of this section shall constitute misconduct.

(f) Unless it is determined that the violation of this section was wilful, a noncompliant attorney must be given at least sixty days to comply with this section before he or she is subject to any discipline.

(g) A minimum continuing legal education commission (''commission'') shall be established by the judicial branch and shall be composed of four superior court judges and four attorneys admitted to practice in this state, all of whom shall be appointed by the chief justice of the supreme court or his or her designee and who shall serve without compensation. The charge of the commission will be to provide

advice regarding the application and interpretation of this rule and to assist with its implementation including, but not limited to, the development of a list of frequently asked questions and other documents to assist the members of the bar to meet the requirements of this rule.

COMMENTARY 2017: It is the intention of this rule to provide attorneys with relevant and useful continuing legal education covering the broadest spectrum of substantive, procedural, ethical and professional subject matter at the lowest cost reasonably feasible and with the least amount of supervision, structure and reporting requirements, which will aid in the development, enhancement and maintenance of the legal knowledge and skills of practicing attorneys and will facilitate the delivery of competent legal services to the public.

The rule also permits an attorney to design his or her own course of study. The law is constantly evolving and attorneys, like all other professionals, are expected to keep abreast of changes in the profession and the law if they are to provide competent representation.

Subsection (a) provides that Connecticut attorneys must complete twelve credit hours of continuing legal education per calendar year. Subsection (a) also lists those Connecticut attorneys, who are exempt from compliance, including, among others: judges, senior judges, attorneys serving in the military, new attorneys during the year in which they are admitted to practice, attorneys who earn less than $1000 in compensation for the provision of legal services in the subject year, and those who obtain an exempt status for good cause shown. The subsection also provides an exemption for attorneys who are disbarred, resigned, on inactive status due to disability, or are retired. The

exemption for attorneys who earn less than $1000 in compensation in a particular year is not intended to apply to attorneys who claim that they were not paid as a result of billed fees to a client. All compensation received for the provision of legal services, whether the result of billed fees or otherwise, must be counted. There is no exemption for attorneys who are suspended or on administrative suspension. Subsection (d) requires an attorney to maintain adequate records of compliance. For continuing legal education courses, a certificate of attendance shall be sufficient proof of compliance. For self-study, a contemporaneous log identifying and describing the course listened to or watched and listing the date and time the course was taken, as well as a copy of the syllabus or outline of the course materials, if available, and, when appropriate, a certificate from the course provider, shall be sufficient proof of compliance. For any other form of continuing legal education, a file including a log of the time spent and drafts of the prepared material shall provide sufficient proof of compliance.

COMMENTARY 2018: The changes to this section were submitted by the Minimum Continuing Legal Education Commission and expand or clarify the manner by which attorneys may satisfy the required hours of continuing legal education.

Sec. 2-52. Resignation and Waiver of Attorney Facing Disciplinary Investigation

(a) The superior court may, under the procedure provided herein, permit an attorney to submit his or her resignation from the bar with or without the waiver of right to apply for readmission to the bar at any time in the future if the attorney's conduct is the subject of an

investigation or proceeding by a grievance panel, a reviewing committee, the statewide grievance committee, the disciplinary counsel or the court.

(b) Concurrently with the written resignation, the attorney shall submit an affidavit stating the following:

(1) that he or she desires to resign and that the resignation is knowingly and voluntarily submitted, the attorney is not being subjected to coercion or duress, and is fully aware of the consequences of submitting the resignation;

(2) the attorney is aware that there is currently pending an investigation or proceeding concerning allegations that he or she has been guilty of misconduct, the nature of which shall be specifically set forth in the affidavit;

(3) either (A) that the material facts of the allegations of misconduct are true, or (B) if the attorney denies some or all of the material facts of the allegations of misconduct, that the attorney acknowledges that there is sufficient evidence to prove such material facts of the allegations of misconduct by clear and convincing evidence;

(4) the attorney waives the right to a hearing on the merits of the allegations of misconduct, as provided by these rules, and acknowledges that the court will enter a finding that he or she has engaged in the misconduct specified in the affidavit concurrently with the acceptance of the resignation.

(c) If the written resignation is accompanied by a waiver of the right to apply for readmission to the bar, the affidavit required in (b) shall

also state that the attorney desires to resign and waive his or her right to apply for readmission to the bar at any time in the future.

(d) Any resignation submitted in accordance with this section shall be in writing, signed by the attorney, and filed in sextuplicate with the clerk of the superior court in the judicial district in which the attorney resides, or if the attorney is not a resident of this state, with the clerk of the superior court in Hartford. The clerk shall forthwith send one copy to the grievance panel, one copy to the statewide bar counsel, one copy to disciplinary counsel, one copy to the state's attorney, [and] one copy to the standing committee on recommendations for admission to the bar, and one copy to all complainants whose grievance complaints filed against the attorney in Connecticut resulted in the submission. Such resignation shall not become effective until accepted by the court after a hearing, at which the court has accepted a report by the statewide grievance committee, made a finding of misconduct based upon the respondent's affidavit, and made a finding that the resignation is knowingly and voluntarily made. With the exception of the statewide bar counsel and disciplinary counsel, no person or entity who, pursuant to this subsection, receives a copy of a resignation shall have the right to participate in the hearing required by this subsection.

(e) Acceptance by the court of an attorney's resignation from the bar without the waiver of the right to apply for readmission to the bar at any time in the future shall not be a bar to any other disciplinary proceedings based on conduct occurring before or after the acceptance of the attorney's resignation.

COMMENTARY: The changes to this section require that one copy of any resignation submitted in accordance with this section be sent to, among other individuals and committees, all complainants whose grievance complaints filed against the attorney in Connecticut resulted in the submission of the resignation. With the exception of the statewide bar counsel and disciplinary counsel, no person or entity who, pursuant to this subsection, receives a copy of a resignation shall have the right to participate in the hearing required by this subsection.

Sec. 3-17. —Activities of Legal Intern

[(a) The legal intern, supervised in accordance with these rules, may appear in court or at other hearings in the following situations:

(1) where the client is financially unable to afford counsel; or

(2) where the intern is assisting a privately retained attorney; or

(3) where the intern is assisting an established legal aid bureau or organization, a public defender or prosecutor's office, or a state agency.**]**

[(b)**]**(a) In each case where a legal intern appears in court or before an administrative tribunal, the written consent and approval referred to in Section 3-14 shall be filed in the record of the case and shall be brought to the attention of the judicial authority or the presiding officer of the administrative tribunal.

[(c)**]**(b) In addition to appearing in court or before an administrative tribunal, an intern may, under the supervision of a member of the bar:

(1) prepare pleadings and other documents to be filed in any matter;

(2) prepare briefs, abstracts and other documents.

[(d)**]**(c) Each document or pleading must contain the name of the intern who participated in drafting it and must be signed by the supervising attorney.

COMMENTARY: The change to this section makes it consistent with the general grant of authority given to legal interns in Section 3-14.

Sec. 3-19. —Legal Internship Committee

[There shall be established a legal internship committee appointed by the chief justice and composed of four judges, four practicing attorneys, three law professors, and three law students. This committee shall consult with the deans of law schools located in Connecticut, review the progress of the legal internship program, and consider any complaints or suggestions regarding the program.**]**

COMMENTARY: The recommended repeal of this section is in recognition and deference to the Experiential Learning Program managed by the External Affairs Division of the Judicial Branch which provides internship opportunities for law students, as well as graduate and undergraduate students.

Sec. 3-21. —Out-of-State Interns

A legal intern who is certified under a legal internship program or student practice rule in another state or in the District of Columbia may appear in a court or before an administrative tribunal of Connecticut under the same circumstances and on the same conditions as those applicable to certified Connecticut legal interns, if the out-of-state intern files with the clerk of the superior court in Hartford**[**, with a copy to the legal internship committee,**]** a certification by the dean

of his or her law school of his or her admission to internship or student practice in that state or in the District of Columbia, together with the text of that state's or the District of Columbia's applicable statute or rule governing such admissions.

COMMENTARY: The change to this section is consistent with the recommended repeal of Section 3-19.

(NEW) Sec. 4-8. Notice of Complaint or Lawsuit Filed Against Judicial Authority

An attorney or party who has filed a complaint with the judicial review council or an administrative agency or has filed a lawsuit against any judicial authority other than a small claims magistrate, shall give notice of the filing of such complaint or lawsuit to the judicial authority and to all other attorneys and parties of record in any matter pending before the judicial authority or, if the attorney or party has no matter pending before the judicial authority, shall mail such notice by certified mail, return receipt requested or with electronic delivery confirmation, to the judicial authority at the location at which such judicial authority is assigned.

COMMENTARY: The purpose of this new section and the amendments to Section 1-22 of the Practice Book and to Rule 2.11 of the Code of Judicial Conduct is to place an affirmative obligation on the attorneys and parties who have filed a complaint or lawsuit against a judicial authority to give notice of those filings so that the judicial authority is alerted and can proceed in accordance with their ethical and procedural responsibilities.

PROPOSED AMENDMENTS TO THE CIVIL RULES

Sec. 16-1. [Deaf or Hearing Impaired] Jurors Who are Deaf or Hard of Hearing

At the request of a [deaf or hearing impaired] juror who is deaf or hard of hearing or the judicial authority, an interpreter or interpreters provided by the [Commission on the Deaf and Hearing Impaired] Judicial Branch and qualified under General Statutes § 46a-33a shall assist such juror during the juror orientation program and all subsequent proceedings, and when the jury assembles for deliberation.

COMMENTARY: The changes to this section conform the section to the provisions of No. 17-202 of the 2017 Public Acts and recognize that the Commission on the Deaf and Hearing Impaired was dissolved and no longer provides interpreters to the Branch for people who are deaf or hard of hearing.

Sec. 23-15. —Request for Complex Litigation Status

An attorney [or], judge or self-represented party may request the chief court administrator to make an assignment pursuant to Section 23-13. The request shall be submitted in writing [to] on a form prescribed by the chief court administrator [and the chief administrative judge of the civil division]. When an attorney or self-represented party makes such a request, [the attorney shall serve] a copy of the request shall be served on other parties pursuant to Sections 10-12 through 10-17. Should the chief court administrator deem it appropriate to do so, the chief court administrator may solicit comments on the request by causing a notice to be published in the Connecticut Law Journal.

COMMENTARY: The changes to this section recognize that a self-represented party may request an assignment of a complex litigation case and that requests for such assignments shall be submitted on a form prescribed by the chief court administrator.

PROPOSED AMENDMENTS TO THE FAMILY RULES

Sec. 25-32. Mandatory Disclosure and Production

(a) Unless otherwise ordered by the judicial authority for good cause shown, upon request by a party involved in an action for dissolution of marriage or civil union, legal separation, annulment or support, or a postjudgment motion for modification of alimony or support, opposing parties shall exchange the following documents within **[**thirty**]** sixty days of such request:

(1) all federal and state income tax returns filed within the last three years, including personal returns and returns filed on behalf of any partnership or closely-held corporation of which a party is a partner or shareholder;

(2) IRS forms W-2, 1099 and K-1 within the last three years including those for the past year if the income tax returns for that year have not been prepared;

(3) copies of all pay stubs or other evidence of income for the current year and the last pay stub from the past year;

(4) statements for all accounts maintained with any financial institution, including banks, brokers and financial managers, for the past 24 months;

(5) the most recent statement showing any interest in any Keogh, IRA, profit sharing plan, deferred compensation plan, pension plan, or retirement account;

(6) the most recent statement regarding any insurance on the life of any party;

(7) a summary furnished by the employer of the party's medical insurance policy, coverage, cost of coverage, spousal benefits, and COBRA costs following dissolution;

(8) any written appraisal concerning any asset owned by either party.

(b) Such duty to disclose shall continue during the pendency of the action should a party appear.

This section shall not preclude discovery under any other provisions of these rules.

COMMENTARY: The change in the time period within which to exchange documents enumerated in this rule is consistent with the recent changes to Sections 13-7 and 13-10 that changed from thirty to sixty days the time for responding or objecting to interrogatories and requests for production.

PROPOSED AMENDMENTS TO THE JUVENILE RULES

Sec. 34a-21. Court-Ordered Evaluations

(a) The judicial authority, after hearing on a motion for a court-ordered evaluation or after an agreement has been reached to conduct such an evaluation, may order a mental or physical examination of a child or youth. The judicial authority after hearing or after an agreement has been reached may also order a thorough physical or mental exami-

nation of a parent or guardian whose competency or ability to care for a child or youth is at issue.

(b) The judicial authority shall select and appoint an evaluator qualified to conduct such assessments, with the input of the parties. All expenses related to the court-ordered evaluations shall be the responsibility of the petitioner; however the party calling the evaluator to testify will bear the expenses of the evaluator related to testifying.

(c) At the time of appointment of any court appointed evaluator, counsel and **[**the court services officer**]** a representative of the court shall complete the evaluation form and agree upon appropriate questions to be addressed by the evaluator and materials to be reviewed by the evaluator. If the parties cannot agree, the judicial authority shall decide the issue of appropriate questions to be addressed and materials to be reviewed by the evaluator. A representative of the court shall contact the evaluator and arrange for scheduling and for delivery of the referral package.

(d) Any party who wishes to alter, to update, to amend or to modify the initial terms of referral shall seek prior permission of the judicial authority. There shall be no ex parte communication with the evaluator by counsel prior to completion of the evaluation, except that the evaluator conducting a competency evaluation of a parent or guardian may have ex parte communication with said counsel of a parent or guardian prior to the completion of the competency evaluation.

(e) After the evaluation has been completed and filed with the court, counsel may communicate with the evaluator subject to the following terms and conditions:

(1) Counsel shall identify themselves as an attorney and the party she or he represents;

(2) Counsel shall advise the evaluator that with respect to any substantive inquiry into the evaluation or opinions contained therein, the evaluator has the right to have the interview take place in the presence of counsel of his/her choice, or in the presence of all counsel of record;

(3) Counsel shall have a duty to disclose to other counsel the nature of any ex parte communication with the evaluator and whether it was substantive or procedural. The disclosure shall occur within a reasonable time after the communication and prior to the time of the evaluator's testimony;

(4) All counsel shall have the right to contact the evaluator and discuss procedural matters relating to the time and place of court hearings or evaluation sessions, the evaluator's willingness to voluntarily attend without subpoena, what records are requested, and the parameters of the proposed examination of the evaluator as a witness.

(f) Counsel for children, youths, parents or guardians may move the judicial authority for permission to disclose court records for an independent evaluation of their own client. Such evaluations shall be paid for by the moving party and shall not be required to be disclosed to the judicial authority or other parties, unless the requesting party, upon receipt of the evaluation report, declares an intention to introduce the evaluation report or call the evaluator as a witness at trial.

COMMENTARY: The changes to this section clarify existing practice, provide consistency of terms, and specify a necessary exception

to the general prohibition against ex parte communication with an evaluator.

Sec. 35a-12. Protective Supervision—Conditions, [and] Modification and Termination

(a) When protective supervision is ordered, the judicial authority will set forth any conditions of said supervision including duration, specific steps and review dates.

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

(c) If an extension of protective supervision is being sought by the commissioner of the department of children and families or any other party in interest, including counsel for the minor child or youth, then a written motion for the same shall be filed not less than thirty days prior to such expiration. Such motion shall be heard either at the in court review of protective supervision if it is held within thirty days of such expiration or at a hearing to be held within ten days after the filing of such motion. For good cause shown and under extenuating circumstances, such written motion may be filed in a period of less than thirty days prior to the expiration of the protective supervision and the same shall be docketed accordingly. The motion shall set forth the reason(s) for the extension of the protective supervision and the period of the extension being sought. If the judicial authority orders such extension of protective supervision, the extension order shall be

reviewed by the judicial authority at least thirty days prior to its expiration.

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

(e) Any party who seeks to have an order of protective supervision terminate prior to its scheduled expiration date shall file a written motion to terminate the order. The motion shall set for the reason or reasons why it is in the child's best interests for protective supervision to terminate early. If termination of protective supervion is sought on the day of a scheduled in court review hearing, such motion may be filed that day. All parties shall be afforded reasonable time to review the written motion and accompanying status reports or other relevant documents. Upon finding that the best interests of the child so warrant, the judicial authority, acting on such motion and after notice is given and a hearing has been held, may terminate an order of protective superivion prior to its scheduled expiration date.

COMMENTARY: These revisions provide a process in a child protection case for the termination of the order of protective supervision prior to the scheduled expiration date when it is in the child's best interests.

PROPOSED AMENDMENTS TO THE CRIMINAL RULES

Sec. 38-1. Release from Custody; Superior Court Arrest Warrant where Appearance before Clerk Required

(a) When any person is arrested on a warrant pursuant to General Statutes § 54-2a in which the judicial authority issuing such warrant has indicated that bail should be denied, or has ordered that the arrested person be brought before a clerk or assistant clerk of the superior court, the arresting officer shall, without undue delay, bring such person before the clerk or assistant clerk of the superior court for the geographical area where such offense is alleged to have been committed**[**,**]** during the office hours of such clerk**[**,**]** and, if such clerk's office is not open, the arresting officer shall, without undue delay, bring such person to a holding facility within the geographical area where such offense is alleged to have been committed or, if there is no such facility available within such geographical area, to the nearest available facility, or the York Correctional Institution. Such clerk or assistant clerk or such person designated by the commissioner of correction shall advise the **[**defendant**]**arrested person of the warnings contained in Section 37-3 and, when the judicial authority has not indicated that bail should be denied, shall release the **[**defendant**]**arrested person upon his or her **[**meeting**]**entering into the conditions of release fixed in the warrant, conditioned that the arrested person shall appear before the superior court having criminal jurisdiction in and for the geographical area to answer to the bench warrant of arrest and information filed in the case. If the **[**defendant**]**arrested person was brought to such a facility, he or she shall be given the opportunity to contact private

counsel or the public defender. If the **[**defendant**]**arrested person is not released because of his or her failure to enter into the conditions of release fixed by the judicial authority, or if he or she has been arrested for an offense that is not bailable, the **[**defendant**]**arrested person shall be presented before a judicial authority pursuant to Sections 37-1 **[**and 37-4. If the defendant is not released because he or she has been arrested for an offense which is not bailable, the defendant shall be presented before a judicial authority pursuant to Section 37-1**]**.

(b) When any person is arrested on a bench warrant of arrest issued by a judicial authority, in which the judicial authority has not indicated that bail should be denied, or has not ordered that the officer making such arrest bring such person before the clerk, the officer making the arrest shall, without undue delay, comply with the provisions of Sections 38-2 and 38-3 in setting the conditions of release for such person.

COMMENTARY: The revisions to this rule make the rule consistent with the correlating statute, General Statutes § 54-64b, particularly to include the requirement that any release be conditioned on the arrested person's appearance in court.

Sec. 38-2. Release Following Any Other Arrest; Release by Law Enforcement Officer[s] or Probation Officer Serving Warrant

(a) Except in cases of arrest pursuant to a warrant in which the judicial authority has indicated that bail should be denied or has ordered that the arrested person be brought before a clerk or assistant clerk of the superior court, when any person is taken into custody for a bailable offense that person shall be brought promptly to a police

station or other lawful place of detention, where, as quickly as possible under the circumstances, he or she shall be informed or warned in writing of his or her rights under Section 37-3 and of his or her right to be interviewed concerning the terms and conditions of release. Unless the **[**defendant**]**arrested person waives or refuses such interview, a law enforcement officer or a probation officer serving a violation of probation warrant shall promptly interview that person to obtain information relevant to the terms and conditions of his or her release from custody and shall seek independent verification of such information where necessary. At the request of the **[**defendant**]**arrested person, his or her counsel may be present during such interview. No statement made by the arrested person in response to any question during the interview related to the terms and conditions of release shall be admissible as evidence against the arrested person in any proceeding arising from the incident for which the conditions of release were set. After such a waiver, refusal or interview, the law enforcement officer or probation officer shall promptly order release of the **[**defendant**]**arrested person upon his or her execution of a written promise to appear or his or her posting of a bond with or without surety in such amount as may be set by such officer, except that no condition of release set by the **[**court or a judge thereof**]**judicial authority may be modified by such officer, and no person shall be released upon the execution of a written promise to appear or the posting of a bond without surety if the person is charged with a family violence crime and, in the commission of such crime, the person used or threatened the use of a firearm. If the **[**defendant**]**arrested person has not posted

bail, the officer shall immediately notify a bail commissioner. The officer may administer such oaths as are necessary in the taking of promises or bonds.

(b) If the arrested person is charged with a family violence crime, and the police officer or probation officer does not intend to impose nonfinancial conditions of release pursuant to this subsection, the police officer or probation officer shall promptly order the release of such person pursuant to the procedure set forth in subsection (a) of this section. If the arrested person is not so released, the officer shall make reasonable efforts to contact a bail commissioner or an intake, assessment, and referral specialist immediately. If, after making such reasonable efforts, the officer is unable to contact a bail commissioner or an intake, assessment, and referral specialist, or the officer makes contact, but the bail commissioner or intake, assessment, and referral specialist is unavailable promptly to perform his or her duties pursuant to Section 38-3, the officer shall, order the release of the arrested person pursuant to the procedure set forth in subsection (a) of this section, and may impose nonfinancial conditions of release, which may require the arrested person to do one or more of the following:

(1) Avoid all contact with the alleged victim of the crime;

(2) Comply with specified restrictions on his or her travel, association, or place of abode that are directly related to the protection of the alleged victim of the crime;

(3) Not use or possess a dangerous weapon, intoxicant or controlled substance.

Any nonfinancial conditions of release imposed pursuant to this subsection shall remain in effect until the arrested person is presented before the Superior Court. On such date, the judicial authority shall conduct a hearing pursuant to General Statutes § 46b-38c, at which the arrested person is entitled to be heard with respect to the issuance of a protective order.

An officer imposing nonfinancial conditions of release shall, on a form prescribed by the Office of the Chief Court Administrator, indicate such conditions and state and swear to:

(1) The efforts that were made to contact a bail commissioner;

(2) The specific factual basis relied upon by the officer to impose the nonfinancial conditions of release; and

(3) If the arrested person was non-English speaking, that the services of a translation service or interpreter were used.

A copy of this form shall be provided to the arrested person immediately, and a copy of this form shall also be provided to counsel for the arrested person at arraignment.

(c) No officer shall set the terms and conditions of an arrested person's release, set a bond for an arrested person, or release an arrested person from custody under this section unless the officer has first checked the National Crime Information Center (NCIC) computerized index of criminal justice information to determine if the arrested person is listed in the index.

COMMENTARY: The revisions to this rule make the rule consistent with the correlating statute, General Statutes § 54-63c, particularly to include probation officers in the arresting officers governed by this

provision, specify the procedure for addressing persons arrested for family violence crimes, and include the NCIC check requirement before releasing any arrested person under this provision.

Sec. 38-3. –Release by Bail Commissioner or Intake, Assessment, and Referral Specialist

(a) Upon notification by a law enforcement officer that an **[**defendant**]**arrested person has not posted bail, a bail commissioner or an intake, assessment, and referral specialist shall promptly conduct an interview and investigation and, based upon release criteria established by the **[**chief bail commissioner**]**Court Support Services Division, shall, except as provided in subsection (c) of this section, promptly order the release of the **[**defendant**]** arrested person upon the first of the following conditions of release found sufficient to ensure **[**the defendant's**]**his or her appearance in court **[**and to reasonably ensure that the safety of any other person will not be endangered**]**:

(1) The **[**defendant's**]**arrested person's execution of a written promise to appear without special conditions;

(2) The **[**defendant's**]**arrested person's execution of a written promise to appear with any of the nonfinancial conditions specified in subsection (b) of this section;

(3) The **[**defendant's**]**arrested person's execution of a bond without surety in no greater amount than necessary;

(4) The **[**defendant's**]**arrested person's execution of a bond with surety in no greater amount than necessary.

If the arrested person is unable to meet the conditions of release ordered, the bail commissioner or intake, assessment, and referral

specialist shall inform the court in a report prepared pursuant to subsection (d) of this section.

(b) In addition to or in conjunction with any of the conditions enumerated in **[**subdivisions (1) to (4), inclusive, of**]** subsection (a) of this section, the bail commissioner or intake, assessment, and referral specialist may impose nonfinancial conditions of release, which may require that the **[**defendant**]**arrested person do any of the following:

(1) Remain under the supervision of a designated person or organization;

(2) Comply with specified restrictions on his or her travel, association, or place of abode;

(3) Not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant, or a controlled substance;

(4) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense; or

(5) Satisfy any other condition that is reasonably necessary to ensure **[**the**]**his or her appearance **[**of the defendant**]** in court **[**and that the safety of any other person will not be endangered**]**.

Any of the conditions imposed under subsection (a) of this section and this subsection **[**by the bail commissioner**]** shall be effective until the appearance of such person in court.

(c) No person shall be released upon the execution of a written promise to appear or the posting of a bond without surety if the person is charged with a family violence crime and, in the commission of such crime, the person used or threatened the use of a firearm.

[(c)**]**(d) The bail commissioner shall prepare for review by the judicial authority an interview record and a written report for each person interviewed. The written report shall contain the information obtained during the interview and verification process, the **[**defendant's**]**arrested person's prior criminal record, if possible, the determination or recommendation of the bail commissioner concerning terms and conditions of release, and, where applicable, a statement that the **[**defendant**]**arrested person was unable to meet the conditions of release ordered by the bail commissioner or the intake, assessment, and referral specialist.

COMMENTARY: The revisions to this rule make the rule consistent with the correlating statute, General Statutes § 54-63d, particularly to include intake, assessment, and referral specialists in the officials governed by this provision, require a report to the court when an arrested person is not released under this provision, and limit the release of a person arrested for a family violence crime that involved the use or threatened use of a firearm.

Sec. 38-4. –Release by Judicial Authority

(a) Except as provided in subsection (c) of this section, **[**W**]**when any defendant is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such **[**person**]**defendant upon the first of the following conditions of release found sufficient to reasonably **[**to assure**]** ensure the **[**person's**]**defendant's appearance in court **[**and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest

that the defendant may pose a risk to the physical safety of any person, that the safety of any person will not be endangered**]**:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's deposit with the clerk of the court of an amount of cash equal to 10 percent of the amount of the surety bond set, pursuant to Section 38-8;

(5) The defendant's execution of a bond with surety in no greater amount than necessary**[**;**]**.

[(6) The defendant's execution of a cash bond and his or her deposit with the clerk of the court of cash in the amount of the bond set by the judicial authority in no greater amount than necessary.**]**

In no event shall the judicial authority prohibit a bond from being posted by surety.

[In addition to or in conjunction with any of the conditions of release enumerated in this subsection, the judicial authority may impose one or more nonfinancial conditions of release pursuant to subsection (d).**]**

(b) The judicial authority may, in determining what conditions of release will reasonably **[**assure**]** ensure the appearance of the defendant in court pursuant to subsection (a) of this section, consider the following factors **[**(1) through (7) below, and, when the crimes charged or the facts and circumstances brought to the attention of the judicial

authority suggest that the defendant may pose a risk to the physical safety of any person, the judicial authority may also consider factors (8) through (10) below**]**:

(1) The nature and circumstances of the offense**[**, including the weight of the evidence against the defendant**]**;

(2) The defendant's record of previous convictions;

(3) The defendant's past record of appearance in court **[**after being admitted to bail**]**;

(4) The defendant's family ties;

(5) The defendant's employment record;

(6) The defendant's financial resources, character, and mental condition; and

(7) The defendant's community ties**[**;**]**

[(8) The defendant's history of violence;

(9) Whether the defendant has previously been convicted of similar offenses while released on bond; and

(10) The likelihood based upon the expressed intention of the defendant that he or she will commit another crime while released**]**.

(c) When any defendant charged with a serious felony enumerated in General Statutes § 54-64a (b) (1) or a family violence crime is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such defendant upon the first of the following conditions of release found sufficient to reasonably ensure the defendant's appearance in court and that the safety of any other person will not be endangered:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's deposit with the clerk of the court of an amount of cash equal to 10 percent of the amount of the surety bond set, pursuant to Section 38-8;

(5) The defendant's execution of a bond with surety in no greater amount than necessary.

In no event shall the judicial authority prohibit a bond from being posted by surety.

(d) The judicial authority may, in determining what conditions of release will reasonably ensure the appearance of the defendant in court and that the safety of any other person will not be endangered pursuant to subsection (c) of this section, consider the following factors:

(1) The nature and circumstances of the offense;

(2) The defendant's record of previous convictions;

(3) The defendant's past record of appearance in court after being admitted to bail;

(4) The defendant's family ties;

(5) The defendant's employment record;

(6) The defendant's financial resources, character, and mental condition;

(7) The defendant's community ties;

(8) The number and seriousness of the charges pending against the defendant;

(9) The weight of evidence against the defendant;

(10) The defendant's history of violence;

(11) Whether the defendant has previously been convicted of similar offenses while released on bond; and

(12) The likelihood based upon the expressed intention of the defendant that he or she will commit another crime while released.

When imposing conditions of release under subsection (c) of this section, the court shall state for the record any factors under subsection (d) of this section that it considered and the findings that it made as to the danger, if any, that the defendant might pose to the safety of any other person upon the defendant's release that caused the court to impose the specific conditions of release that it imposed.

(e) If the defendant is charged with no offense other than a misdemeanor, the court shall not impose financial conditions of release on such person unless:

(1) The defendant is charged with a family violence crime;

(2) The defendant requests such financial conditions; or

(3) The judicial authority makes a finding on the record that there is a likely risk that:

(A) The defendant will fail to appear in court, as required;

(B) The defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(C) The defendant will engage in conduct that threatens the safety of himself or herself or another person.

In making such finding, the judicial authority may consider past criminal history, including any prior record of failing to appear as required in court that resulted in any conviction for failure to appear in the first degree, in violation of General Statutes § 53a-172, or any conviction during the previous ten years for failure to appear in the second degree, in violation of General Statutes § 53a-172, and any other pending criminal cases.

[(c)**]**(f) In addition to or in conjunction with any of the conditions enumerated in **[**subdivisions (1) to (6) of**]** subsections (a) or (c) of this section, the judicial authority may, when it has reason to believe that the defendant is drug-dependent and where necessary, reasonable, and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such defendant.

[(d)**]**(g) If the judicial authority determines that a nonfinancial condition of release should be imposed in addition to or in conjunction with any of the conditions enumerated in **[**subdivisions (1) to (6) of**]** subsections (a) or (c) of this section, the judicial authority shall order the pretrial release of the defendant subject to the least restrictive condition or combination of conditions that the judicial authority determines will reasonably **[**assure**]** ensure the appearance of the defendant in court and, **[**when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defen-

dant may pose a risk to the physical safety of any person,**]** when the defendant is charged with a felony enumerated in General Statutes § 54-64a (b) (1) or a family violence crime, that the safety of any person will not be endangered, which conditions may include an order that he or she do one or more of the following:

(1) Remain under the supervision of a designated person or organization;

(2) Comply with specified restrictions on his or her travel, association, or place of abode;

(3) Not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant, or a controlled substance;

(4) Provide sureties of the peace pursuant to General Statutes § 54-56f under supervision of a designated bail commissioner or intake, assessment, and referral specialist;

(5) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(6) Maintain employment or, if unemployed, actively seek employment;

(7) Maintain or commence an educational program;

(8) Be subject to electronic monitoring; or

(9) Satisfy any other condition that is reasonably necessary to **[**assure**]** ensure the appearance of the defendant in court and that the safety of any other person will not be endangered.

[(e)**]** The judicial authority shall state on the record its reasons for imposing any such nonfinancial condition.

[(f)**]**(h) The judicial authority may require that the defendant subject to electronic monitoring pursuant to subsection **[**(d)**]**(g) of this section pay directly to the electronic monitoring service provider a fee for the cost of such electronic monitoring services. If the judicial authority finds that the defendant subject to electronic monitoring is indigent and unable to pay the costs of electronic monitoring services, it shall waive such costs.

(i) If any defendant is not released, the judicial authority shall order the defendant committed to the custody of the Commissioner of Correction until he or she is released or discharged in due course of law.

COMMENTARY: The revisions to this rule make the rule consistent with the correlating statute, General Statutes § 54-64a, as amended by Public Acts 2017, No. 17-145, § 1 and Public Acts, Spec. Sess., June, 2017, No. 17-2, § 205. Specifically, the revisions include the limitation on setting cash only bonds, specify the procedures for setting conditions of release for individuals charged with no crime other than a misdemeanor, specify the procedures for setting conditions of release for an individuals charged with serious felonies and family violence crimes, and specify the procedure for committing defendants not released under this provision to the Commissioner of Corrections.

Sec. 38-5. –Release by Correctional Officials

Any person who has not made bail shall be detained in a correctional facility and shall be released from such institution upon entering into a recognizance, with sufficient surety, or upon posting cash bail as provided in Sections 38-7 and 38-9 for his or her appearance before the court having cognizance of the offense, which are to be taken by

any person designated by the commissioner of correction at such institution where such person is detained. **[**Such**]**The person so designated shall deliver the recognizance or cash bail to the clerk of the appropriate court before the opening of such court on the first court day thereafter.

COMMENTARY: The revisions to this rule address a minor grammatical issue.