Minutes of the Meeting
Rules Committee of the Superior Court
Monday, February 7, 2022

On February 7, 2022, the Rules Committee met using Microsoft Teams from 2:00 p.m. to 2:54 p.m.

Members in attendance were:

HON. ANDREW J. McDONALD, CHAIR
HON. HOLLY ABERY-WETSTONE
HON. BARBARA N. BELLIS
HON. SUSAN QUINN COBB
HON. JOHN B. FARLEY
HON. ALEX V. HERNANDEZ
HON. TAMMY T. NGUYEN-O'DOWD
HON. SHEILA M. PRATS
HON. ANTHONY D. TRUGLIA

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Lori Petruzzelli, Assistant Counsel to the Rules Committee.

1. The Committee approved the minutes of the meeting held on January 10, 2022, with no revisions.

2. The Committee considered a proposal from the Litigation Section of the Connecticut Bar Association to amend Section 7-17 regarding filings received after 5:00 p.m. (RC ID # 2020-007).

After discussion, the Committee voted to table this matter and take no action.

3. The Committee reconsidered a proposal from Judge Conway to amend Practice Book Sections 27-1A and 27-4A regarding the nonjudicial handling of certain delinquency cases to implement recommendations of the IOYouth Task Force (RC ID # 2021-011).

Judge Dawne Westbrook was present and addressed the Committee on this matter.

After discussion, the Committee voted to submit to public hearing the proposal from Judge Conway to amend Practice Book Sections 27-1A and 27-4A, as set forth in Appendix A, attached to these minutes. Judge Prats abstained from voting on this matter.

4. The Committee considered a proposal from Legal Services Associations to amend Practice Book Sections 7-10 and 7-11 and to adopt a new Section 7-11A regarding retention and destruction of summary process records (RC ID # 2021-023).

Attorney Giovanna Shay was present and addressed the Committee on this matter.

After discussion, the Committee tabled this matter and referred it for comment to Court Operations, Judge Abrams, and any tenant and landlord associations determined to be interested.

5. The Committee considered a proposal from the Connecticut Bar Association to amend Practice Book Section 2-44A and Rule 5.5 of the Connecticut Rules of Professional Conduct to provide that remote practice from Connecticut by attorneys licensed and in good standing in other jurisdictions is not the unauthorized practice of law (RC ID # 2021-025).

Attorney Marcy Stovall, Statewide Bar Counsel Michael Bowler, and Chief Disciplinary Counsel Brian Staines were present and addressed the Committee on this matter.

After discussion, the Committee voted unanimously to submit to public hearing the revised proposal from the Connecticut Bar Association to amend Practice Book Section 2-44A and Rule 5.5 of the Connecticut Rules of Professional Conduct to provide that remote practice from Connecticut by attorneys licensed and in good standing in other

jurisdictions does not constitute the practice of law in this jurisdiction, as set forth in Appendix B, attached to these minutes.

6. The Committee considered a proposal to amend Section 2-4A to add language inadvertently omitted when submitted to public hearing and voted on by the Judges of the Superior Court on June 26, 2020 (RC ID # 2022-001).

After discussion, the Committee voted unanimously to submit to public hearing the proposal to amend Section 2-4A, as set forth in Appendix C, attached to these minutes.

7. The Committee considered a proposal from Judge Dawne Westbrook to revise numerous Practice Book Rules pursuant to Public Act 21-104, which changed the reference from “detention” to “juvenile residential center” as of January 1, 2022 (RC ID # 2022-002).

Judge Westbrook was present and addressed the Committee on this matter.

After discussion, the Committee voted unanimously to submit to public hearing the proposal to revise numerous Practice Book Rules pursuant to Public Act 21-104, as set forth in Appendix D, attached to these minutes.

8. The Committee considered a proposal from Department of Revenue Services (DRS) Deputy Commissioner John Biello to amend Practice Book Section 2-27 (d) to include DRS as an agency who can access attorney nonpublic information in connection with the collection of the Attorney Occupational Tax (RC ID # 2022-003).

Deputy Commissioner John Biello was present and addressed the Committee on this matter.

After discussion, the Committee tabled this matter and referred it to the Chief Court Administrator and the Connecticut Bar Association for comments.

9. The Committee considered the placement of the new proposed peremptory challenge rule in the General Chapter of the Practice Book as new Section 5-12, and a proposal by Counsel to make reference thereto in Practice Book Sections 16-5 and 42-13 (RC ID # 2022-004).

After discussion, the Committee voted unanimously to submit to public hearing the new proposed peremptory challenge rule as new Section 5-12 of the Practice Book, and the revisions to Practice Book Sections 16-5 and 42-13, as set forth in Appendix E, attached to these minutes.

Respectfully submitted,

Joseph J. Del Ciampo
Counsel to the Rules Committee

APPENDIX A

(020722)

Sec. 27-1A. Referrals for Nonjudicial Handling of Delinquency Complaints

(a) Any police summons accompanied by a police report alleging an act of delinquency shall be in writing and signed by the police officer and filed with the clerk of the Superior Court for juvenile matters. After juvenile identification and docket numbers are assigned, the summons and report shall be referred to the probation department for possible nonjudicial handling.

(b) If the probation **[**officer**]** supervisor or designee determines that a delinquency complaint is eligible for nonjudicial handling, the assigned probation officer **[**may cause a notice to be mailed to the child and parent or guardian setting forth with reasonable particularity the contents of the complaint and fixing a time and location of the court and date not less than seven days, excluding Saturdays, Sundays, and holidays, subsequent to mailing**]** shall contact the parent or guardian in advance of the summons date in order to schedule an interview with the parent or guardian and child for the purpose of conducting risk and behavioral health screenings. A child determined by the risk screen to be at low risk to reoffend will be referred to community based diversionary programs with no further court intervention. Judicial handling will be reserved for those found to be at the highest levels of risk. All other cases will be eligible for nonjudicial handling. Refusal to participate in the screening process will render the child ineligible for diversion.

(c) Delinquency matters eligible for nonjudicial handling shall be designated as such on the docket. If the prosecuting authority objects to the designation, the judicial

authority shall determine if such designation is appropriate. The judicial authority may refer to the Office of Juvenile Probation a matter so designated and may, sua sponte, refer a matter for nonjudicial handling prior to adjudication.

COMMENTARY: The changes to this section and to Section 27-4A implement the recommendation of the IOYouth Task Force to more strategically direct juvenile delinquency cases from the formal court process.

Sec. 27-4A. Ineligibility for Nonjudicial Handling or Diversion of Delinquency Complaint

In the case of a delinquency complaint, a child shall not be eligible for nonjudicial handling or diversion if one or more of the following apply, unless waived by the judicial authority:

(1) The alleged misconduct is:

(A) **[**is**]** a serious juvenile offense under General Statutes § 46b-120**[**, or any other felony or violation of General Statutes § 53a-54d**]**;

(B) **[**concerns the theft or unlawful use or operation of a motor vehicle**]** a violent felony; or

(C) **[**concerns the sale of, or possession of with intent to sell, any illegal drugs or the use or possession of a firearm.**]** a violation of General Statutes § 53a-54d; or

[(2) The child was previously adjudicated delinquent or adjudged a child from a family with service needs alleged misconduct was committed by a child while on probation or under judicial supervision.

(3) The child admitted nonjudicially at least twice previously to having been delinquent.**]**

[(4)**]** (2) The alleged misconduct was committed by a child while on probation or under judicial supervision.

[(5) If the nature of the alleged misconduct warrants judicial intervention.**]**

COMMENTARY: The changes to this section and to Section 27-1A implement the recommendation of the IOYouth Task Force to more strategically direct juvenile delinquency cases from the formal court process.

APPENDIX B

(020722)

Sec. 2-44A. Definition of the Practice of Law

(a) General Definition: The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:

(1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.

(2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.

(3) Drafting any legal document or agreement involving or affecting the legal rights of a person.

(4) Representing any person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(5) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is

transferred where the advice or counsel, or the representation or purported representation, involves (a) the preparation, evaluation, or interpretation of documents related to such transaction or to implement such transaction or (b) the evaluation or interpretation of procedures to implement such transaction, where such transaction, documents, or procedures affect the legal rights, obligations, liabilities or interests of such person, and

(6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Connecticut as established by case law, statute, ruling or other authority.

‘‘Documents’’ includes, but is not limited to, contracts, deeds, easements, mortgages, notes, releases, satisfactions, leases, options, articles of incorporation and other corporate documents, articles of organization and other limited liability company documents, partnership agreements, affidavits, prenuptial agreements, wills, trusts, family settlement agreements, powers of attorney, notes and like or similar instruments; and pleadings and any other papers incident to legal actions and special proceedings.

The term ‘‘person’’ includes a natural person, corporation, company, partnership, firm, association, organization, society, labor union, business trust, trust, financial institution, governmental unit and any other group, organization or entity of any nature, unless the context otherwise dictates.

The term ‘‘Connecticut lawyer’’ means a natural person who has been duly admitted to practice law in this state and whose privilege to do so is then current and in good standing as an active member of the bar of this state.

(b) Exceptions. Whether or not it constitutes the practice of law, the following activities by any person are permitted:

(1) Selling legal document forms previously approved by a Connecticut lawyer in any format.

(2) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where:

(A) Such services are confined to representation before such forum or other conduct reasonably ancillary to such representation; and

(B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice.

(3) Serving in a neutral capacity as a mediator, arbitrator, conciliator or facilitator.

(4) Participating in labor negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements.

(5) Providing clerical assistance to another to complete a form provided by a court for the protection from abuse, harassment and violence when no fee is charged to do so.

(6) Acting as a legislative lobbyist.

(7) Serving in a neutral capacity as a clerk or a court employee providing information to the public.

(8) Performing activities which are preempted by federal law.

(9) Performing statutorily authorized services as a real estate agent or broker licensed by the state of Connecticut.

(10) Preparing tax returns and performing any other statutorily authorized services as a certified public accountant, enrolled IRS agent, public accountant, public bookkeeper, or tax preparer.

(11) Performing such other activities as the courts of Connecticut have determined do not constitute the unlicensed or unauthorized practice of law.

(12) Undertaking self-representation, or practicing law authorized by a limited license to practice.

(c) Remote Practice: To the extent that a lawyer is physically present in this jurisdiction and remotely engages in the practice of law as authorized under the laws of another United States jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in this jurisdiction.

[(c)**]** (d) Nonlawyer Assistance: Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

[(d)**]** (e) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

[(e)**]** (f) Governmental Agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out its responsibilities as provided by law.

[(f)**]** (g) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[(g)**]** (h) Unauthorized Practice: If a person who is not authorized to practice law is engaged in the practice of law, that person shall be subject to the civil and criminal penalties of this jurisdiction.

COMMENTARY: The changes to this section and to Rule 5.5 of the Rules of Professional Conduct address the issue of remote practice and provide that to the extent that a lawyer is physically present in Connecticut and remotely engaged in the practice of law under the law of another recognized jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in Connecticut.

Rule 5.5. Unauthorized Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. The practice of law in this jurisdiction is defined in Practice Book Section 2-44A. Conduct described in subsections (c), **[**and**]** (d) and (f) in another jurisdiction shall not be deemed the unauthorized practice of law for purposes of this subsection (a).

(b) A lawyer who is not admitted to practice in this jurisdiction, shall not:

(1) except as authorized by law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction which accords similar privileges to Connecticut lawyers in its jurisdiction, and provided that the lawyer is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction, that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential mediation or other alternative dispute resolution proceeding in this or another jurisdiction, with respect to a matter that is substantially related to, or arises in, a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subdivisions (c) (2) or (c) (3) and arise out of or are substantially related to the legal services provided to an existing client of the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, who is in good standing in each jurisdiction in which he or she has been admitted, or who has taken retirement status or otherwise left the active practice of law while in good standing in another jurisdiction, may participate in the provision of uncompensated pro bono publico legal

services in Connecticut where such services are offered under the supervision of an organized legal aid society or state or local bar association project.

(e) A lawyer admitted to practice in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) the lawyer is authorized to provide pursuant to Practice Book Section 2-15A and the lawyer is an authorized house counsel as provided in that section; or

(2) the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(f) To the extent that a lawyer is physically present in this jurisdiction and remotely engages in the practice of law as authorized under the laws of another United States jurisdiction in which that lawyer is admitted, such conduct does not constitute the practice of law in this jurisdiction.

[(f)**]** (g) A lawyer not admitted to practice in this jurisdiction and authorized by the provisions of this Rule to engage in providing legal services on a temporary basis in this jurisdiction is thereby subject to the disciplinary rules of this jurisdiction with respect to the activities in this jurisdiction.

[(g)**]** (h) A lawyer desirous of obtaining the privileges set forth in subsection (c) (3) or (4):

(1) shall notify the statewide bar counsel as to each separate matter prior to any such representation in Connecticut,

(2) shall notify the statewide bar counsel upon termination of each such representation in Connecticut, and

(3) shall pay such fees as may be prescribed by the Judicial Branch.

COMMENTARY: A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Subsection (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer's assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed as self-represented parties.

Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates subsection (b) (1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that

the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 (a) and 7.5 (b). A lawyer not admitted to practice in this jurisdiction who engages in repeated and frequent activities of a similar nature in this jurisdiction such as the preparation and/or recording of legal documents (loans and mortgages) involving residents or property in this state may be considered to have a systematic and continuous presence in this jurisdiction that would not be authorized by this Rule and could, thereby, be considered to constitute unauthorized practice of law.

There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Subsection (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of subdivisions (e) (1) and (e) (2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here. There is no single test to determine whether a lawyer's services are provided on a ''temporary basis'' in this jurisdiction and may, therefore, be permissible under subsection (c). Services may be ''temporary'' even though the lawyer provides services in this jurisdiction for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Subsections (c)<u>,</u> **[**and**]** (d) <u>and (f)</u> apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word ''admitted'' in subsections (c)<u>,</u>

[and**]** (d) and (f) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who, while technically admitted, is not authorized to practice, because, for example, the lawyer is in an inactive status.

Subdivision (c) (1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this subdivision to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under subdivision (c) (2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

Subdivision (c) (2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential

witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, subdivision (c) (2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

Subdivision (c) (3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential mediation or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

Subdivision (c) (4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction if they arise out of or are substantially related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted but are not within subdivision (c) (2) or (c) (3). These services include both legal

services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

Subdivision (c) (3) requires that the services be with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted. A variety of factors may evidence such a relationship. However, the matter, although involving other jurisdictions, must have a significant connection with the jurisdiction in which the lawyer is admitted to practice. A significant aspect of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities and the resulting legal issues involve multiple jurisdictions. Subdivision (c) (4) requires that the services provided in this jurisdiction in which the lawyer is not admitted to practice be for (1) an existing client, i.e., one with whom the lawyer has a previous relationship and not arising solely out of a Connecticut based matter and (2) arise out of or be substantially related to the legal services provided to that client in a jurisdiction in which the lawyer is admitted to practice. Without both, the lawyer is prohibited from practicing law in the jurisdiction in which the lawyer is not admitted to practice.

For purposes of subsection (d), an attorney in ''good standing'' is one who: (1) has been admitted to practice law in any United States jurisdiction; (2) is not suspended or disbarred in any other jurisdiction; (3) has never resigned or retired from the practice of law while subject to discipline or disciplinary proceedings in any other jurisdiction; (4) has not been placed on inactive status while subject to discipline or disciplinary proceedings in any other jurisdiction; and (5) is not currently subject to disciplinary proceedings in any other jurisdiction.

Subdivision (e) (2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

A lawyer who practices law in this jurisdiction pursuant to subsection (c), (d) or (e) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5 (a). In some circumstances, a lawyer who practices law in this jurisdiction pursuant to subsection (c), (d) or (e) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction.

Subsections (c), (d), **[**and**]** (e) and (f) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

Subsection (f) reflects the reality that with the advancement of technology, many lawyers work remotely from locations outside the jurisdiction(s) in which they are admitted to practice law. Subsection (f) allows those lawyers to practice law as authorized in the jurisdiction(s) in which they are admitted while physically present in Connecticut. This section coordinates with Practice Book 2-44A (c) which provides that a lawyer admitted in another United States jurisdiction engaged in the remote practice of law as authorized by that jurisdiction while physically present in Connecticut is not engaged in the practice of law in this jurisdiction.

AMENDMENT NOTE: The changes to this rule and to Section 2-44A of the Practice Book address the issue of remote practice and provide that to the extent that a

lawyer is physically present in Connecticut and remotely engaged in the practice of law under the law of another recognized jurisdiction in which the lawyer is admitted, such conduct does not constitute the practice of law in Connecticut.

APPENDIX C

(020722)

Sec. 2-4A. —Records of Bar Examining Committee

(a) All records of the bar examining committee, including transcripts, if any, of hearings conducted by the bar examining committee or the several standing committees on recommendations for admission to the bar shall not be public.

(b) Unless otherwise ordered by the court, all records that are not public shall be available only to the bar examining committee and its counsel, the statewide grievance committee and its counsel, disciplinary counsel, the client security fund committee and its counsel, a judge of the Superior Court or, with the consent of the applicant, to any other person.

COMMENTARY: The changes to this section are made for clarity.

APPENDIX D

(020722)

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

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

(a) The definitions of the terms ‘‘child,’’ ‘‘abused,’’ ‘‘delinquent,’’ ‘‘delinquent act,’’ ‘‘neglected,’’ ‘‘uncared for,’’ ‘‘alcohol-dependent,’’ ‘‘drug-dependent,’’ ‘‘serious juvenile offense,’’ ‘‘serious juvenile offender,’’ ‘‘serious juvenile repeat offender,’’ ‘‘predispositional study,’’ and ‘‘risk and needs assessment’’ shall be as set forth in General Statutes § 46b-120. The definition of ‘‘victim’’ shall be as set forth in General Statutes § 46b-122.

(b) ‘‘Commitment’’ means an order of the judicial authority whereby custody and/or guardianship of a child are transferred to the Commissioner of the Department of Children and Families.

(c) ‘‘Complaint’’ means a written allegation or statement presented to the judicial authority that a child’s conduct as a delinquent brings the child within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

[(d) ‘‘Detention’’ means a secure building or staff secure facility for the temporary care of a child who is the subject of a delinquency complaint.**]**

[(e)**]** (d) ‘‘Guardian’’ means a person who has a judicially created relationship with a child, which is intended to be permanent and self-sustaining, as evidenced by the transfer to the caretaker of the following parental rights with respect to the child:

protection, education, care and control of the person, custody of the person and decision making.

[(f)**]** (e) ‘‘Hearing’’ means an activity of the court on the record in the presence of a judicial authority and shall include (1) ‘‘Adjudicatory hearing’’: A court hearing to determine the validity of the facts alleged in a petition or information to establish thereby the judicial authority’s jurisdiction to decide the matter which is the subject of the petition or information; (2) ‘‘Contested hearing on an order of temporary custody’’ means a hearing on an ex parte order of temporary custody or an order to appear which is held not later than ten days from the day of a preliminary hearing on such orders. Contested hearings shall be held on consecutive days except for compelling circumstances or at the request of the respondent; (3) ‘‘Dispositive hearing’’: The judicial authority’s jurisdiction to adjudicate the matter which is the subject of the petition or information having been established, a court hearing in which the judicial authority, after considering the social study or predispositional study and the total circumstances of the child, orders whatever action is in the best interests of the child or family and, where applicable, the community. In the discretion of the judicial authority, evidence concerning adjudication and disposition may be presented in a single hearing; (4) ‘‘Preliminary hearing’’ means a hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child is uncared for, abused, or neglected. A preliminary hearing on any ex parte custody order or order to appear shall be held not later than ten days from the issuance of the order; (5) ‘‘Plea hearing’’ is a hearing at which (A) a parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights, admits, denies, or pleads nolo contendere to allegations

contained in the petition; or (B) a child who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition; (6) ‘‘Probation status review hearing’’ means a hearing requested, ex parte, by a probation officer regardless of whether a new offense or violation has been filed. The court may grant the ex parte request, in the best interest of the child or the public, and convene a hearing on the request within seven days.

[(g)**]** (f) ‘‘Indian child’’ means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.

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

(g) "Juvenile residential center" means a hardware-secured residential facility operated by the Court Support Services Division of the Judicial Branch that includes direct staff supervision, surveillance enhancements and physical barriers that allow for close supervision and controlled movement in a treatment setting for preadjudicated juveniles and juveniles adjudicated as delinquent.

[(i)**]** (h) ‘‘Parties’’ includes: (1) The child who is the subject of a proceeding and those additional persons as defined herein; (2) ‘‘Legal party’’: Any person, including a parent, whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority’s jurisdiction to adjudicate the matter pending before it; and (3) ‘‘Intervening party’’: Any person who is permitted to intervene in accordance with Section 35a-4.

[(j)**]** (i) ‘‘Permanency plan’’ means a plan developed by the Commissioner of the Department of Children and Families for the permanent placement of a child in the commissioner’s care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110 (b), 17a-111b (c), 46b-129 (k), and 46b-149 (h).

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

[(*l*)**]** (k) ‘‘Information’’ means a formal pleading filed by a prosecutor alleging that a child in a delinquency matter is within the judicial authority’s jurisdiction.

[(m)**]** (*l*) ‘‘Probation supervision’’ means a legal status whereby a juvenile who has been adjudicated delinquent is placed by the court under the supervision of juvenile probation for a specified period of time and upon such terms as the court determines.

[(n)**]** (m) ‘‘Probation supervision with residential placement’’ means a legal status whereby a juvenile who has been adjudicated delinquent is placed by the court under the supervision of juvenile probation for a specified period of time, upon such terms as the court determines, that include a period of placement in a secure or staff-secure residential treatment facility, as ordered by the court, and a period of supervision in the community.

[(o)**]** (n) ‘‘Respondent’’ means a person who is alleged to be a delinquent, or a parent or a guardian of a child who is the subject of a petition alleging that the child is uncared for, abused, neglected, or requesting termination of parental rights.

[(p)**]** (o) ‘‘Secure-residential facility’’ means a hardware-secured residential facility that includes direct staff supervision, surveillance enhancements and physical barriers that allow for close supervision and controlled movement in a treatment setting.

[(q)**]** (p) ‘‘Specific steps’’ means those judicially determined steps the parent or guardian and the Commissioner of the Department of Children and Families should take in order for the parent or guardian to retain or regain custody of a child.

[(r)**]** (q) ‘‘Staff secure facility’’ means a residential facility: (1) that does not include construction features designed to physically restrict the movements and activities of

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

[(s)**]** (r) ‘‘Staff-secure residential facility’’ means a residential facility that provides residential treatment for children in a structured setting where the children are monitored by staff.

[(t)**]** (s) ‘‘Supervision’’ includes: (1) ‘‘Nonjudicial supervision’’: A legal status without the filing of a petition or a court conviction or adjudication but following the child’s admission to a complaint wherein a probation officer exercises supervision over the child with the consent of the child and the parent; (2) ‘‘Protective supervision’’: A disposition following adjudication in neglected, abused or uncared for cases created by an order of the judicial authority requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child when the child’s place of abode remains with the parent or any suitable or worthy person, or when the judicial authority vests custody or guardianship in another suitable and worthy person, subject to the continuing jurisdiction of the court; and (3) ‘‘Judicial supervision’’: A legal status similar to probation for a child subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or § 46b-133e.

[(u)**]** (t) ‘‘Take into Custody Order’’ means an order by a judicial authority that a child be taken into custody and immediately turned over to a **[**detention**]** Juvenile Residential Center **[**s**]**Superintendent where probable cause has been found that the child

has committed a delinquent act, there is no less restrictive alternative available, and the child meets the criteria set forth in Section 31a-13.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.' The deletion of the definition of parent is suggested due to the numerous definitions of that term in Public Act 21-15.

Sec. 30-1A. Admission to [Detention] a Juvenile Residential Center

Whenever an officer or other person intends to admit a child into **[**detention**]** a juvenile residential center, the provisions of General Statutes § 46b-133 shall apply.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-2A. Nondelinquent Juvenile Runaway from Another State and Detention

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

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-3. Advisement of Rights

Upon admission to **[**detention**]** a juvenile residential center, the child shall be advised of the right to remain silent and the right to counsel and be further advised of the

right to a detention hearing in accordance with Sections 30-5 through 30-8, which hearing may be waived only with the written consent of the child and the child's attorney.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-4. Notice to Parents by [Detention] Juvenile Residential Center Personnel

Upon admission, the **[**detention**]** Juvenile Residential Center **[**s**]**Superintendent or a designated representative shall make efforts to immediately notify the parent or guardian in the manner calculated most speedily to effect such notice and, upon the parent's or guardian's appearance at the **[**detention facility**]** juvenile residential center, shall advise the parent or guardian of his or her rights and note the child's rights, including the child's right to a detention hearing.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-5. Detention Time Limitations

(a) No child shall be held in **[**detention**]** a juvenile residential center for more than twenty-four hours, excluding Saturdays, Sundays, and holidays, unless (1) a delinquency petition or information alleging a delinquent act has been filed and (2) an order for such continued detention has been signed by the judicial authority following a hearing as provided by subsection (b) of this section or a waiver of hearing as provided by Section 30-8.

(b) A hearing to determine probable cause and the need for further detention shall be held no later than the next business day following the arrest.

(c) If a nondelinquent child is being held for another jurisdiction in accordance with the Interstate Compact on Juveniles, following the initial hearing as provided by subsection (b) of this section, that child shall be held not more than ninety days and shall be held in a secure facility, as defined by rules promulgated in accordance with the Compact, other than a locked, **[**state operated detention facility**]** juvenile residential center.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-6. Basis for Detention

No child may be held in **[**detention**]** a juvenile residential center unless a judge of the Superior Court determines, based on the available facts that there is probable cause to believe that the child has committed the delinquent acts alleged, that there is no appropriate less restrictive alternative available and that there is (1) probable cause to believe that the level of risk that the child poses to public safety if released to the community prior to the court hearing or disposition cannot be managed in a less restrictive setting, (2) a need to hold the child in order to ensure the child's appearance before the court or compliance with court process, as demonstrated by the child's previous failure to respond to the court process, or (3) a need to hold the child for another jurisdiction. The court in exercising its discretion to detain under General Statutes § 46b-133 (e) may consider as an alternative to detention a suspended detention order with graduated

sanctions based upon a detention risk screening for such child developed by the Judicial Branch.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-8. Initial Order for Detention; Waiver of Hearing

Such initial order of detention may be signed without a hearing only if there is a written waiver of the detention hearing by the child and the child's attorney and there is a finding by the judicial authority that the circumstances outlined in Section 30-6 pertain to the child in question. An order of detention entered without a hearing shall authorize the detention of the child for a period not to exceed seven days, including the date of admission, or until the dispositional hearing is held, whichever is shorter, and may further authorize the **[**detention**]** Juvenile Residential Center **[**s**]**Superintendent or a designated representative to release the child to the custody of a parent, guardian or some other suitable person, with or without conditions of release, if detention is no longer necessary, except that no child shall be released from **[**detention**]** a juvenile residential center who is alleged to have committed a serious juvenile offense except by order of a judicial authority of the Superior Court. Such an ex parte order of detention shall be renewable only at a detention hearing before the judicial authority for a period that does not exceed seven days or until the dispositional hearing is held, whichever is shorter.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-10. Orders of a Judicial Authority after Initial Detention Hearing

(a) At the conclusion of the initial detention hearing, the judicial authority shall issue an order for detention on finding probable cause to believe that the child has committed a delinquent act and that at least one of the factors outlined in Section 30-6 applies to the child.

(b) If the child is placed in **[**detention**]** a juvenile residential center, such order for detention shall be for a period not to exceed seven days, including the date of admission, or until the dispositional hearing is held, whichever is the shorter period, unless, following a further detention review hearing, the order is renewed for a period that does not exceed seven days or until the dispositional hearing is held, whichever is shorter. Such detention review hearing may not be waived.

(c) If the child is not placed in **[**detention**]** a juvenile residential center but released on a suspended order of detention on conditions, such suspended order of detention shall continue to the dispositional hearing or until further order of the judicial authority. Said suspended order of detention may be reviewed by the judicial authority every seven days. Upon a finding of probable cause that the child has violated any condition, a judicial authority may issue a take into custody order or order such child to appear in court for a hearing on revocation of the suspended order of detention. Such an order to appear shall be served upon the child in accordance with General Statutes § 46b-128 (b), or, if the child is represented, by serving the order to appear upon the child's counsel, who shall notify the child of the order and the hearing date. After a hearing and upon a finding that the child has violated reasonable conditions imposed on release, the judicial authority

may impose different or additional conditions of release or may remand the child to **[**detention**]** a juvenile residential center.

(d) In conjunction with any order of release from **[**detention**]** a juvenile residential center the judicial authority may, in accordance with General Statutes § 46b-133 (g), order the child to participate in a program of periodic alcohol or drug testing and treatment as a condition of such release. The results of any such alcohol or drug test shall be admissible only for the purposes of enforcing the conditions of release from **[**detention**]** a juvenile residential center.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

Sec. 30-11. Detention after Dispositional Hearing

While awaiting implementation of the judicial authority's order in a delinquency case, a child may be held in **[**detention**]** a juvenile residential center subsequent to the dispositional hearing, provided a hearing to review the circumstances and conditions of such detention order shall be conducted every seven days and such hearing may not be waived.

COMMENTARY: The proposed revisions are consistent with Public Act 21-104, specifically the change from 'detention' to 'juvenile residential center.'

APPENDIX E

(020722)

(NEW) **Sec. 5-12. Objection to the Use of a Peremptory Challenge**

(a) **Policy and Purpose.** The purpose of this rule is to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.

(b) **Objection.** A party may object to the use of a peremptory challenge to raise a claim of improper bias. The court may also raise this objection on its own. The objection shall be made by simple citation to this rule, and any further discussion shall be conducted outside the presence of the prospective juror.

(c) **Response.** Upon objection to the exercise of a peremptory challenge pursuant to this rule, the party exercising the peremptory challenge shall articulate the reason that the peremptory challenge has been exercised.

(d) **Determination.** The court shall then evaluate from the perspective of an objective observer, as defined in subsection (e) herein, the reason given to justify the peremptory challenge in light of the totality of the circumstances. If the court determines that the use of the challenge against the prospective juror, as reasonably viewed by an objective observer, legitimately raises the appearance that the prospective juror's race or ethnicity was a factor in the challenge, then the challenge shall be disallowed and the prospective juror shall be seated. If the court determines that the use of the challenge does not raise such an appearance, then the challenge shall be permitted and the prospective juror shall be excused. The court need not find purposeful discrimination to disallow the peremptory challenge. The court must explain its ruling on the record. A party

whose peremptory challenge has been disallowed pursuant to this rule shall not be prohibited from attempting to challenge peremptorily the prospective juror for any other reason, or from conducting further voir dire of the prospective juror.

(e) **Nature of Observer**. For the purpose of this rule, an objective observer (1) is aware that purposeful discrimination, and implicit, institutional, and unconscious biases, have historically resulted in the unfair exclusion of potential jurors on the basis of their race, or ethnicity; and (2) is deemed to be aware of and to have given due consideration to the circumstances set forth in section (f) herein.

(f) **Circumstances considered.** In making its determination, the circumstances the court should consider include, but are not limited to, the following:

(1) the number and types of questions posed to the prospective juror including consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the questions asked about it;

(2) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the prospective juror, unrelated to his testimony, than were asked of other prospective jurors;

(3) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

(4) whether a reason might be disproportionately associated with a race or ethnicity;

(5) if the party has used peremptory challenges disproportionately against a given race or ethnicity in the present case, or has been found by a court to have done so in a previous case;

(6) whether issues concerning race or ethnicity play a part in the facts of the case to be tried;

(7) whether the reason given by the party exercising the peremptory challenge was contrary to or unsupported by the record.

(g) **Reasons Presumptively Invalid.** Because historically the following reasons for peremptory challenges have been associated with improper discrimination in jury selection in Connecticut or maybe influenced by implicit or explicit bias, the following are presumptively invalid reasons for a peremptory challenge:

(1) having prior contact with law enforcement officers;

(2) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;

(3) having a close relationship with people who have been stopped, arrested, or convicted of a crime;

(4) living in a high-crime neighborhood;

(5) having a child outside of marriage;

(6) receiving state benefits;

(7) not being a native English speaker; and

(8) having been a victim of a crime.

The presumptive invalidity of any such reason may be overcome as to the use of a peremptory challenge on a prospective juror if the party exercising the challenge demonstrates to the court's satisfaction that the reason, viewed reasonably and objectively, is unrelated to the prospective juror's race or ethnicity and, while not seen by the court as sufficient to warrant excusal for cause, legitimately bears on the prospective juror's ability to be fair and impartial in light of particular facts and circumstances at issue in the case.

(h) **Reliance on Conduct.** The following reasons for peremptory challenges also have historically been associated with improper discrimination in jury selection: allegations that the prospective juror was inattentive, failing to make eye contact or exhibited a problematic attitude, body language, or demeanor. If any party intends to offer one of these reasons or a similar reason as a justification for a peremptory challenge, that party must provide reasonable notice to the court and the other parties so the behavior can be verified and addressed in a timely manner. A party who intends to exercise a peremptory challenge for reasons relating to those listed above in subsection (g) shall, as soon as practicable, notify the court and the other party in order to determine whether such conduct was observed by the court or that party. If the alleged conduct is not corroborated by observations of the court or the objecting party, then a presumption of invalidity shall apply but may be overcome as set forth in subsection (g).

(j) **Review Process**. The chief justice shall appoint an individual or individuals to monitor issues relating to this rule.

COMMENTARY: This new rule is intended to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.

Sec. 16-5. Peremptory Challenges

(a) Each party may challenge peremptorily the number of jurors which each is entitled to challenge by law. Where the judicial authority determines a unity of interests exists, several plaintiffs or several defendants may be considered as a single party for the purpose of making challenges, or the judicial authority may allow additional peremptory challenges and permit them to be exercised separately or jointly. For the purposes of this section, a ‘‘unity of interest’’ means that the interests of the several plaintiffs or the several defendants are substantially similar. A unity of interest shall be found to exist among parties who are represented by the same attorney or law firm. In addition, there shall be a presumption that a unity of interest exists among parties where no cross claims or apportionment complaints have been filed against one another. In all civil actions, the total number of peremptory challenges allowed to the plaintiff or plaintiffs shall not exceed twice the number of peremptory challenges allowed to the defendant or defendants, and the total number of peremptory challenges allowed to the defendant or defendants shall not exceed twice the number of peremptory challenges allowed to the plaintiff or plaintiffs.

(b) Pursuant to the provisions of Section 5-12, a party or the court on its own may object to the use of a peremptory challenge to raise a claim of improper bias.

COMMENTARY: The purpose of this amendment is to include a reference to the procedure to object to peremptory challenges under Section 5-12, to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.

Sec. 42-13. —Peremptory Challenges

(a) The prosecuting authority and the defendant may challenge peremptorily the number of jurors which each is entitled to challenge by law.

(b) Pursuant to the provisions of Section 5-12, a party or the court on its own may object to the use of a peremptory challenge to raise a claim of improper bias.

COMMENTARY: The purpose of this amendment is to include a reference to the procedure to object to peremptory challenges under Section 5-12, to eliminate the unfair exclusion of potential jurors based upon race or ethnicity.