

Rules Committee of the Superior Court
Monday, November 15, 2021, 2:00 p.m.
(Via Microsoft Teams)

REVISED-Meeting Agenda

RC ID #

2021-MIN Approval of the minutes from the September 13, 2021 meeting of the Rules Committee of the Superior Court.

2019-004 Proposal from Natasha M. Pierre, State Victim Advocate, to amend several rules and sections to advise crime victims of rights and provide for notice to victims and opportunity for victims to provide statements; review of subsequent efforts to address these issues using court procedures and technology.

Previously on the agenda on March 15, 2021. Update to be given by Judge Gold.

- a. Proposal
- b. Clarification from OVA
- c. Comments from the Office of the Chief Public Defender
- d. Comments from the Office of the Chief State's Attorney
- e. Comments from the Chief Disciplinary Counsel
- f. Comments from the CCDLA
- g. Comments from CBA Criminal Justice Section
- h. Comments from Statewide Grievance
- i. Request from Judge Conway
- j. Comments from CBA Standing Committee on Professional Ethics
- k. Revised Proposal
- l. Comments from J Conway
- m. Partial withdrawal from OVA
- n. Letter from Counsel to OVA and redrafted proposal
- o. OVA response to Comments

2021-008 Proposal from Attorney Zarella to amend Section 23-1 to replace existing language concerning sections of the General Statutes with "Chapter 909 of the General Statutes" to make order to show cause procedures applicable to proceedings under the Revised Uniform Arbitration Act.

Previously on the agenda on September 13, 2021.

- a. Proposal
- b. Comments from Judge Abrams on proposal

2021-011 Proposal from Judge Conway to amend Sections 27-1A and 27-4A regarding the nonjudicial handling of certain delinquency cases to implement recommendations of the IOYouth Task Force.

Previously on the agenda on September 13, 2021.

- a. Proposal
- b. Revised proposal

- 2021-014** Proposal from Judge Noble to revise the standard premises liability interrogatories (Form 203) and requests for production (Form 206) to include whether there was an agreement for snow and ice removal and the existence of a contract for the same.
Previously on the agenda on September 13, 2021.
- a. Proposal
 - b. Forms 203 and 206
 - c. Comments from Judge Abrams on proposal
 - d. Comments from CTLA on proposal
- 2021-015** Proposal from Chief Justice Robinson for a new rule eliminating peremptory challenges based on race or ethnicity, as recommended by the Jury Selection Task Force.
Previously on the agenda on September 13, 2021.
- a. Proposal and supporting documents
 - b. Comments from Judge Abrams
 - c. Comments from Atty Harry Weller and Justice Zarella (Ret.)
 - d. Comments from Justice Katz (Ret.)
 - e. Comments from CTLA on proposal
- 2021-019** Proposal to Revise Practice Book Section 35a-1 (b) to remove the written requirement for nolo pleas.
First time being considered.
- a. Cover memo J Westbrook
 - b. Proposal
- 2021-020** Add reference in Section 3-9 to Section Section 35a-20A.
First time being considered.
- a. Proposal
- 2021-021** Proposal for amendments to Secs. 13-8 and 13-10, which were suggested by Attorney Drew Redman, Assistant Reporter of Judicial Decisions and approved by Judge Bellis, to add references to the relevant new medical negligence forms.
First time being considered.
- a. Proposal
- 2021-022** Proposal to amend Section 43-39 and 43-41 re speedy trial timing.
First time being considered.
- a. Proposal
- 2021-MISC** Such other matters as may come before the Rules Committee.



NATASHA M. PIERRE, ESQ.
State Victim Advocate

March 20, 2019

Hon. Andrew McDonald, Chair
Rules Committee of the Superior Court
Supreme Court Building
231 Capitol Avenue
Hartford, CT 06106

Re: Proposal for Changes to the Rules of Professional Conduct

Dear Justice McDonald,

The Office of the Victim Advocate (OVA) is an independent state agency charged with the promotion and protection of the constitutional and statutory rights of crime victims in Connecticut (C.G.S. §46a-13b). Among its many responsibilities, the OVA recommends systemic changes in state policies to ensure the proper treatment and protection of crime victims.

Background: Crime victims cannot seek relief when their constitutional rights are violated. See, *State v. Skipwith*, 165 A.3d 1211 (Conn. 2017). Some Courts have addressed the matter by applying Rule 8.4 (d), engaging in conduct that is prejudicial to the administration of justice. See, *Attorney Grievance Comm'n v. Smith*, A.3d. 2015 WL 737412 (MD. Feb. 23, 2015).

I submit the following recommendations to amend the Connecticut *Rules of Professional Conduct* and *Code of Judicial Conduct* to address and/or avoid violations of crime victims' rights within the criminal justice system.

- 1. Rule 3.8 Special Responsibilities of a Prosecutor**
NEW (3) Make reasonable efforts to assure that the victim, the parent or guardian of such victim or such victim's counsel has been advised of their rights, the procedures

505 Hudson Street 5th Floor, Hartford, CT 06106 • Phone: (860) 550-6632 • Fax: (860) 560-7065 • www.ct.gov/ova

for exercising such rights, and are given reasonable opportunity to exercise such rights.

2. **Sec 30a-1(a) Initial Plea Hearing**

The judicial authority shall begin the hearing by determining whether all necessary parties are present and that the rules governing services of notice for nonappearing parties and the victim of a delinquent act, the parent or guardian of such victim or such victim's counsel have been complied with, and shall note these facts for the record. The judicial authority shall then inform the parties of the substance of the petition or information

3. **Sec 30a-5 Dispositional Hearing**

NEW (c) Prior to any disposition, the victim of a delinquent act, the parent or guardian of such victim or such victim's counsel shall be allowed a reasonable opportunity to make a victim impact statement to the judicial authority.

4. **Sec 39-7 Notice of Plea Agreement**


NEW Notice of the plea agreement and hearing shall be provided to the victim, the parent or guardian of such victim or such victim's counsel.

5. **NEW language for Sections 30a-1, 30a-5, 39.7, 43-10 (2)**

If no victim is present at the hearing and a written statement has not been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim. If it is not established that a reasonable attempt has been made to notify the victim, the court shall: (1) reschedule the hearing; or (2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement.

I look forward to working with you to address this important matter. I can be reached at (860) 550-6632 or Natasha.Pierre@ct.gov.

Sincerely,


Natasha M. Pierre, JD, MSW



NATASHA M. PIERRE, ESQ.
State Victim Advocate

October 3, 2019

Joseph J. Del Ciampo
Counsel to the Rules Committee
State of CT Judicial Branch
Via email to Joseph.DelCiampo@jud.ct.gov

Re: OVA's Proposal for Rule Amendments

Dear Attorney Del Ciampo.

I am writing in response to your correspondence dated September 23, 2019 regarding the above referenced matter.

Response to your questions:

- I am not seeking amendments to the Code of Judicial Conduct. I am seeking amendments to the Rules of Professional Conduct, the Procedural Rules Juvenile Matters, and the Procedural Rules in Criminal Matters.
- #3- Section 30a-5: requesting a new section.
- #4 - Sec 39-7: requesting a new section.
- #5 – requesting a new sections in Sections 30a-1, 30a-5, 39-7, 43-10.

I've attached the proposals – only amended to clarify whether or not the requested amendment is to existing language or entirely new language. Please let me know if you have any questions or concerns. I can be reached at (860) 550-6632 or Natasha.Pierre@ct.gov.

Sincerely,


Natasha M. Pierre, JD, MSW

Rules of Professional Conduct

Rule 3.8 Special Responsibilities of a Prosecutor

NEW SECTION: Make reasonable efforts to assure that the victim, the parent or guardian of such victim or such victim's counsel has been advised of their rights, the procedures for exercising such rights, and are given reasonable opportunity to exercise such rights.

Procedure in Juvenile Matters

Sec 30a Initial Plea Hearing

AMEND 30a-1(a): The judicial authority shall begin the hearing by determining whether all necessary parties are present and that the rules governing services of notice for nonappearing parties and the victim of a delinquent act, the parent or guardian of such victim or such victim's counsel have been complied with, and shall note these facts for the record. The judicial authority shall then inform the parties of the substance of the petition or information

NEW SECTION: If no victim is present at the hearing and a written statement has not been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim. If it is not established that a reasonable attempt has been made to notify the victim, the court shall: (1) reschedule the hearing; or (2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement.

Sec 30a-5 Dispositional Hearing

NEW SECTION Prior to any disposition, the victim of a delinquent act, the parent or guardian of such victim or such victim's counsel shall be allowed a reasonable opportunity to make a victim impact statement to the judicial authority.

NEW SECTION: If no victim is present at the hearing and a written statement has not been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim. If it is not established that a reasonable attempt has been made to notify the victim, the court shall: (1) reschedule the hearing; or (2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement.

Procedure in Criminal Matters

Sec 39-7 Notice of Plea Agreement

NEW SECTION: Notice of the plea agreement and hearing shall be provided to the victim, the parent or guardian of such victim or such victim's counsel.

NEW SECTION: If no victim is present at the hearing and a written statement has not been submitted, the court shall inquire on the record whether an attempt has been made to notify

any such victim. If it is not established that a reasonable attempt has been made to notify the victim, the court shall: (1) reschedule the hearing; or (2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement.

Sec 43-10 Sentencing Hearing; Procedures To Be Followed

NEW SECTION: If no victim is present at the hearing and a written statement has not been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim. If it is not established that a reasonable attempt has been made to notify the victim, the court shall: (1) reschedule the hearing; or (2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement.



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

OFFICE OF CHIEF PUBLIC DEFENDER
30 TRINITY STREET, 4TH FLOOR
HARTFORD, CT 06106

ATTORNEY CHRISTINE PERRA RAPILLO
CHIEF PUBLIC DEFENDER
TEL: (860) 509-6429
FAX: (860) 509-6499

October 3, 2019

RECEIVED
2019 OCT -7 AM 7:55
LEGAL SERVICES
CT JUDICIAL BRANCH

Joseph Del Ciampo, Esq.
Counsel
Superior Court Rules Committee
100 Washington Street, 3rd Floor
Hartford, CT 06106

Dear Attorney Del Ciampo:

I am writing in response to the referral from the Rules Committee for comments to the proposal from the Office of the Victim Advocate (OVA) to amend both the Rules of Professional Conduct and several sections of the Practice Book relating to the interaction between prosecutors and victims. The Division of Public Defender Services has consistently been supportive of a crime victim's right to be informed regarding the proceedings, to have reasonable notice of hearings and to be able to speak as to the disposition of a case. However, we are concerned that the proposals may infringe on the independence of the prosecutorial authority.

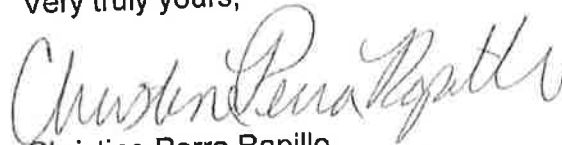
A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence – Connecticut Rules of Professional Conduct, Rule 3.8, Official Commentary. This important responsibility will sometimes put a prosecutor in conflict with a victim or a victim's family, who may be controlled by emotions and not able to accurately process the weight of evidence or what a fair disposition might be. Prosecutors must be free to weigh the evidence in a criminal matter and speedily resolve the charges, including entering a nolle prosequi or moving to dismiss when pursuing the case would be unjust based on the evidence and circumstances.

Joseph Del Ciampo, Esq.
Page 2
October 3, 2019

There are significant processes and procedures currently in place to ensure that victims receive reasonable notice of hearings and are given the opportunity to speak at dispositional proceedings. I would urge the Rules Committee to cautiously review the proposals, as it is our assessment that the proffered changes are already covered by existing statutes.

Thank you for the opportunity to be heard on this important matter.

Very truly yours,

A handwritten signature in cursive script, reading "Christine Perra Rapillo".

Christine Perra Rapillo
Chief Public Defender



KEVIN T. KANE
CHIEF STATE'S ATTORNEY

RC # 2019-004 d
State of Connecticut
DIVISION OF CRIMINAL JUSTICE

OFFICE OF
THE CHIEF STATE'S ATTORNEY

300 CORPORATE PLACE
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PHONE (860) 258-5800 FAX (860) 258-5858

October 10, 2019

Joseph J. Del Ciampo
Counsel to the Rules Committee
State of Connecticut, Judicial Branch
100 Washington St., 3rd Floor
PO Box 150474
Hartford CT 06115-0474

Dear Attorney Del Ciampo,

I am writing to you in response to your request for comments on the proposed changes to the rules for the proper treatment of victims in criminal matters.

The Division of Criminal Justice consistently attempts to inform and protect victim's rights as guaranteed by the Connecticut Constitution throughout the adjudicatory process. In furtherance of that goal, DCJ does not object to certain changes to the process. These changes align with the suggestions our Supreme Court made in State v. Skipwith, 326 Conn. at 517.

Specifically, DCJ would suggest that a rule require the court at the "outset of a sentencing hearing or any judicial proceeding concerning the acceptance of a plea pursuant to a plea agreement," ascertain whether reasonable efforts have been made to inform the victim of his or her right "to make a statement to the court, orally or in writing, regarding the plea or sentence, and, if not, whether reasonable measures were undertaken to do so." State v. Skipwith, 326 Conn. at 538-39.

The Division believes that the proposed change to Rule 3.8 of the Rules of Professional Conduct is inappropriate and unwarranted. The Division acknowledges that mistakes occur and victims are sometimes not notified of upcoming court dates. There are a variety of factors beyond a prosecutor's control such as scheduling, illness of an attorney or Judge, a conflicting court date for an attorney or a continuance granted by the court without a prosecutor's knowledge or consent. This rule also presumes that each case is assigned to an individual prosecutor upon whom this responsibility should lie. In our system, most cases are not individually assigned and it would therefore be unfair to hold a prosecutor responsible who merely called the file in court. This rule would also place an unfair burden on prosecutors who rely on others such as OVS advocates, domestic violence advocates, rape crisis counselors and victim's attorneys who all act as victim liaisons in criminal matters. To place this responsibility solely at the feet of the prosecutor and subject them to a grievance when so many other parties play a role in this process is fundamentally unfair.

October 17, 2019

Page 2

The addition of sanctions against prosecutors would not seem to significantly advance the goal of ensuring that victims be advised of their rights so that they have an opportunity to exercise them. If the goal is to ensure that victims are properly and timely advised of their rights, the suggested revisions to the Practice Book, which would require the trial court, at the start of any plea or sentencing proceeding, to inquire of the state whether reasonable efforts had been undertaken to inform the victim or his or her rights, and which would allow the court to suspend proceedings if such efforts had not been made, would seem to be sufficient.

Sanctioning prosecutors is also inconsistent with the policy behind General Statutes § 54-224, which exempts “the state or any agent, employee or officer thereof” from liability for “(1) the failure to afford the victim of a crime any of the rights provided pursuant to any provision of the general statutes or (2) the failure to provide the victim of a crime with any notice pursuant to any provision of the general statutes.” While the statute’s reference to liability may be construed as civil liability, and while it is restricted to the rights provided to victims pursuant to the general statutes, the legislature’s clear intent to protect state agents from punishment for violations related to victims’ rights is at odds with a rule that would subject prosecutors to sanctions for conduct that runs afoul of the victim’s rights amendment.

The proposed addition to Code of Professional Conduct § 3.8 is also troublesome because it would place the entire burden of notification on the prosecutor, completely ignoring the role of the victim’s advocate. After the passage of the victim’s rights amendment, the legislature enacted General Statutes § 46a-13c, which created the office of victim’s advocate. The legislative history of that statute shows that it was adopted in response “to concerns of victim advocacy groups that passage of the victim’s right amendment had yet to result in the anticipated improved treatment of crime victims.” *State v. Gault*, 304 Conn. at 343. The legislature empowered the victim advocate to “[f]ile a limited special appearance in any court proceeding for the purpose of advocating for a victim’ the rights secured by subdivisions (4), (5), (7), (8), (9) and (10) of the victim’s rights amendment.” *Id.* at 343-44 (quoting P.A. 98-231, § 2). “In 2001, that charge was expanded to include advocacy ‘for any right guaranteed to a crime victim by the [c]onstitution of the state or any right provided to a crime victim by any provision of the general statutes.’” *Id.* at 344 (quoting P.A. 2001, No. 01-211, § 12(5)).

Furthermore, as stated on the Connecticut Judicial System’s website, the role of the Office of Victim’s Services is, in part, to give victims “information about the CT Constitution Victim Rights and how to exercise those rights; giv[e] updates on the criminal case; and go[] to court and BOPP hearings with victims and advocate[e]for their rights.” <https://www.jud.ct.gov/crimevictim/advocacy.htm>. The proposed rule would sanction prosecutors for failing to do what would seem to be more properly the charge and function of the victim’s advocate.

October 17, 2019

Page 3

Thank you for allowing us to provide input into this process. The Division will continue its efforts to adequately inform victims of their rights throughout the adjudicative process. We will strive, to the best of our ability, to assure that we comply with all the rules of court and our constitutional obligations in this area.

We look forward to working with the Committee on this issue.

Sincerely,

Kevin D Lawlor
Deputy Chief State's Attorney for Operations



RC # 2019-004 e

**STATE OF CONNECTICUT
JUDICIAL BRANCH**

COURT OPERATIONS DIVISION

OFFICE of CHIEF DISCIPLINARY COUNSEL

Brian B. Staines, *Chief Disciplinary Counsel*

*100 Washington Street
Hartford, Connecticut 06106
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Brian.Staines@jud.ct.gov*

October 11, 2019

Joseph J. Del Ciampo, Esq.
Director of Legal Services
Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106

RE: Practice Book Changes Proposed by the Office of the Victim Advocate

Dear Attorney Joseph J. Del Ciampo:

I have reviewed the proposal of The Office of the Victim Advocate dated March 20, 2019. I am responding to identify how these proposals relate to the work done by the Office of the Chief Disciplinary Counsel. Numbered paragraph one of the proposal seeks to amend Rule 3.8 of the Rules of Professional Conduct by adding a new section that requires the prosecutor to make reasonable efforts to ensure the victim, or the parent, guardian or counsel of such victim, has been advised of their rights and the procedures for exercising such rights in criminal matters. Numbered paragraphs two and three of the proposal add specific procedures regarding notice and an opportunity to be heard to Practice Book, Chapter 30a - Delinquency and Family with Service Needs Hearings. Numbered paragraph four proposes a change to the Practice Book, Procedure in Criminal Matters, section 39-7 - Notice of Plea Agreement, that requires notice of a plea agreement be given to the victim. Finally, the proposal in numbered paragraph five amends the foregoing sections in numbered paragraphs two through four as well as Practice Book Section 43-10(2) to preclude finalizing a criminal disposition unless the victim has been notified and given an opportunity to be heard.

I am not aware of a grievance filed against a State's Attorney for failure to protect a crime victim's rights where probable cause has been found and the matter referred to my office within the last three years. However, it could very well be that such a

grievance was referred to a local panel of the Statewide Grievance Committee and dismissed upon the finding of no probable cause. It should be noted that the proposals set forth in numbered paragraphs two through five amend the Practice Book procedures in juvenile and criminal cases. This would accomplish the stated goal of ensuring that a crime victim is properly noticed of each stage of the proceedings. The proposal in numbered paragraph one is a change of the Rules of Professional Conduct and its violation may be considered misconduct and prosecuted by this office. The victim advocate correctly points out that presently, a violation of a provision of the Practice Book may be a violation of Rule of Professional Conduct 8.4(4) - Engage in conduct that is prejudicial to the administration of justice.

Please feel free to contact me should you have any questions.

Very truly yours,



Brian B. Staines
Chief Disciplinary Counsel

BBS



Morgan P. Rueckert
Phone: (860) 251-5821
Fax: (860) 251-5219
mrueckert@goodwin.com

October 16, 2019

VIA EMAIL

Joseph.DelCiampo@jud.ct.gov

Joseph J. Del Ciampo, Esq.
Director of Legal Services
State of Connecticut
Superior Court Operations
100 Washington Street, 3rd Floor
Hartford, CT 06115-0474

Attorney Del Ciampo,

Thank you for the opportunity to provide comment on proposed rulemaking. The Connecticut Criminal Defense Lawyers Association is a not-for-profit organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, the CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, the CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

With respect to the proposal from the **Office of the Victim Advocate (OVA)** to modify the Rules of Professional Responsibility for prosecutors and Practice Book provisions concerning juvenile matters¹, the proposals appear to be redundant of other provisions and a codification of practices that are already in place. Further, CCDLA's position is and has always been that a criminal case is a proceeding between the people and the defendant, and the prosecutor represents the interests of the people, not any individual. To create an ethical obligation for a prosecutor that runs directly to a victim has the potential to make the prosecution more about redressing individual rights, than asserting the interests of the State -- which are not always the same. That is not our system of

¹ The letter from the OVA references a change to the Code of Judicial Conduct but the substance of the letter does not propose any change.

justice in Connecticut and CCDLA feels it is a dangerous path to start down. Individual rights may be pursued in other venues.

Our substantive objection pertains to the proposal to modify the Practice Book sections related to Juvenile and Criminal Matters that would require a continuance of a matter if a victim has not been notified or is not present, which would, in the case of a detained defendant affect the due process rights of that defendant and improperly prolong detention or otherwise delay resolution of his or her case without any fault of his own.

With respect to the proposals from **Senators Looney and Winfield and Representative Stafstrom** to modify Practice Book provisions regarding Discovery, CCDLA supports any effort to reform or standardize criminal discovery and any measures that will ensure that a defendant has received all discovery that the defendant is entitled to well in advance of trial.

CCDLA would suggest the following in lieu of Proposal 2, pertaining to completion of discovery before accepting a plea: "Before a plea deal is approved, the court shall inquire and ensure that the defendant is satisfied with the disclosures made and with the prosecutorial official's compliance with the provisions of this section." Rarely, but sometimes, favorable plea offers are premised on a prosecutor's understanding that there are problems with the case and a defendant's willingness to forgo things like suppression motions, Franks Hearings and occasionally even completed discovery. In such rare occurrences, we would like the ability for counsel to indicate satisfaction with the discovery, even though it may not be technically complete.

With respect to Item 3, pertaining to continuances for late discovery, we would like to see the addition of a provision that would permit the court to exclude evidence because of late discovery as an alternative to continuing the case. It is often not possible for defense counsel to obtain an expert to analyze evidence or refute expert testimony in 35 days. The provision as written may result in the court just extending the deadline in response to late discovery in a way that would still prejudice the defendant. We would like to see the trial court retain the ability to exclude evidence.

With respect to Item 4, pertaining to the disclosure of witness lists, some trial lawyers were concerned that the proposed rule would require simultaneous disclosure of witness lists. The concern is that such a requirement would be impractical because defense witnesses may depend on the state's declared witnesses and that late appearing defense witnesses are often unavoidable. CCDLA would prefer disclosure by the State 30 days before trial and subsequent disclosure by the defense.

With respect to Item 5, pertaining to a list of disclosed materials, CCDLA suggests the following language: "The prosecutorial official shall provide to the defendant an itemized list of information or material disclosed pursuant to this section. The listing of

Joseph J. Del Ciampo, Esq.
October 16, 2019
Page 3

such information or material shall be in the order in which the prosecutorial official disclosed such information or material. The defendant and the prosecutorial official shall acknowledge, in writing or otherwise on the record in open court, the disclosure of all information or material provided to the defendant under this section.” We think it a better practice for both sides to acknowledge on the record the provision and receipt of itemized discovery.

Thank you again for this opportunity to participate in the process of rulemaking. Please feel free to contact me with any questions or concerns.

Sincerely,



Morgan P. Rueckert, President
Connecticut Criminal Defense Lawyers Association

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October 16, 2019

Joseph Del Ciampo, Esq.
Director of Legal Services
Connecticut Judicial Branch
Via email to joseph.delciampo@jud.ct.gov

Re: Proposed Rules Committee Changes

Dear Attorney Del Ciampo:

I am the Chair of the Connecticut Bar Association's Criminal Justice Section. As you requested via email, we have opened up for comments from the Criminal Justice Section's membership on the proposed rule changes before the Rules Committee. While the section will not be taking an official position on these changes, I can provide you the following feedback from those section members that responded. I apologize for sending you this information today, rather than on yesterday's deadline. We had some delay in accessing the online survey results from our section members.

Regarding the proposed discovery rule changes, the feedback is as follows: Section members reported support for the proposed change to change the rules so that a defendant's requests for a continuance would not implicate his or her speedy trial rights if the prosecution has not met its discovery deadline.

Some section members had reservations regarding the second proposed change, requiring that the court confirm all discovery has been completed before accepting a plea agreement. These members supported adding language permitting a defendant to knowingly and voluntarily waive this requirement, because sometimes it is favorable for a defendant to plead quickly, before discovery is completed.

Feedback from the section regarding the third proposed change, involving a 35-day delay between discovery completion and trial, was favorable.

The section's feedback was mixed in response to the change regarding witness lists. Multiple persons reported concerns in obligating defendant's to turn

over witness lists, especially far ahead of trial, because defendant's have no obligation to present witnesses nor even decide to present witnesses until the prosecution's case is complete. Some were also confused by the language in this change, and it was unclear at what stage of the case the witness list request could be made. (Right after arrest? Pretrial? When the case is on the trial list?) Others did support this proposed change without comment.

Section member feedback was positive towards the requirement that prosecutors maintain a list of disclosed materials and that defense confirm receipt. There were concerns raised about adding additional cumbersome requirements, though.

In regards to the proposed changes to rules about victims' participation in the process, the section was more negative. Section members provided disapproving feedback for all four proposals. Some found the codified requirements to be redundant and unnecessary, believing prosecutors and courts are already very accommodating and open to victim participation. Members also noted this blurs the line between the prosecution representing the State of Connecticut versus representing individual victims. While the section did not provide an overwhelming number of responses on this topic, none were supportive of these changes.

I hope you will consider the input of our section's members in your deliberations. If you require any additional information or feedback, please feel free to contact me at trentlalima@gmail.com. Again, I apologize for not providing this email by the end of the day yesterday.

Sincerely,



Trent A. LaLima
Chair
Criminal Justice Section
Connecticut Bar Association

O'Donnell, Shanna

From: Bowler, Michael
Sent: Thursday, October 17, 2019 2:47 PM
To: Del Ciampo, Joseph
Subject: Proposed Amendment to Rule 8.3 of the Rules of Professional Conduct

Dear Attorney Del Ciampo:

At its October 17, 2019 meeting, the Statewide Grievance Committee reviewed your September 23, 2019 email and the March 20, 2019 proposal offered by the State Victim Advocate to amend Rule 3.8 of the Rules of Professional Conduct as follows:

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall . . .

(3) Make reasonable efforts to assure that the victim, the parent or guardian of such victim, or such victim's counsel has been advised of their rights, the procedures for exercising such rights, and are given reasonable opportunity to exercise such rights.

The Statewide Grievance Committee unanimously voted to take no position on the proposal. The Committee did make two observations:

1. Proposed new subsection (3) contains a possible object/verb discrepancy with the words "has" and "their."
2. Rule 3.8 currently contains 6 subsections. On its face, the State Victim Advocate's proposal would replace the current subsection (3), which provides that a prosecutor shall not to seek the waiver of certain pretrial rights from unrepresented defendants. The Committee noted that all of the existing subsections to Rule 3.8 should be preserved in the final version of the rule.

Please let me know if you have any questions.

Michael P. Bowler
Statewide Bar Counsel
Statewide Grievance Committee
287 Main Street, Second Floor, Suite Two
East Hartford, CT 06118-1885
Tel: (860) 568-5157 (X. 3362)
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Michael.Bowler@jud.ct.gov

O'Donnell, Shanna

From: Conway, Bernadette
Sent: Thursday, October 17, 2019 12:30 PM
To: Del Ciampo, Joseph
Subject: RE: Referral from the Rules Committee

Dear Attorney Del Ciampo,

In reviewing OVA's proposals it appears that at least some of the proposals may significantly impact the handling of delinquency cases in juvenile courts throughout the state. If possible, I am requesting an additional month to submit my written remarks to the Rules Committee. Thank you.

From: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>
Sent: Thursday, October 17, 2019 10:34 AM
To: Conway, Bernadette <Bernadette.Conway@jud.ct.gov>
Cc: O'Donnell, Shanna <Shanna.ODonnell@jud.ct.gov>
Subject: FW: Referral from the Rules Committee

Dear Judge Conway,

I am wondering if you have any comments on the attached referral. Please let me know if you need more time to review the proposal and comment and I will advise the Rules Committee. Thank you.

Joseph J. Del Ciampo
Director of Legal Services
Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120
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From: Del Ciampo, Joseph
Sent: Monday, September 23, 2019 5:14 PM
To: Conway, Bernadette <Bernadette.Conway@jud.ct.gov>
Subject: Referral from the Rules Committee

Dear Judge Conway,

Attached is a referral to you from the Rules Committee. Thank you.

Joseph J. Del Ciampo
Director of Legal Services
Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

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O'Donnell, Shanna

From: Stovall, Marcy <MStovall@PULLCOM.COM>
Sent: Friday, October 18, 2019 9:01 AM
To: Del Ciampo, Joseph
Cc: Chapman, Bill (bchapman@ctbar.org); Rinehart, Kim E.
Subject: RE: Referral from the Rules Committee [re Rule 3.8]

Dear Attorney Del Ciampo,

On behalf of the CBA Standing Committee on Professional Ethics, I write in response to the inquiry from the Rules Committee concerning a proposal from Natasha M. Pierre, from the State of Connecticut Office of the Victim Advocate (OVA), to amend Rule 3.8 of the Rules of Professional Conduct, as well as various Practice Book provisions. The OVA also indicates an intention to propose an amendment to the Code of Judicial Conduct, but no specific proposal concerning the Code of Judicial Conduct is included in the OVA's March 20, 2019, letter to the Rules Committee.

Thank you to the Rules Committee for giving the Ethics Committee the opportunity to offer comments.

The Ethics Committee views the proposed changes to the Practice Book as outside our purview and therefore provides no comment on those portions of the OVA's proposal. The Ethics Committee would also consider proposed changes to the Code of Judicial Conduct as outside our purview.

In regard to the Rules of Professional Conduct, the Ethics Committee **opposes** the proposed addition to Rule 3.8.

The OVA proposes to amend Rule 3.8 (Special Responsibilities of a Prosecutor) as follows (proposed addition underlined):

The prosecutor in a criminal trial shall:

...

(3) Make reasonable efforts to assure that the victim, the parent or guardian of such victim or such victim's counsel has been advised of their rights, the procedures for exercising such rights, and are given a reasonable opportunity to exercise such rights.

The Ethics Committee opposes this proposed amendment. In the Committee's view, the proposed addition would have the effect of importing substantive law into the Rules of Professional Conduct; and would impose substantive obligations on prosecutors that do not currently exist. Specifically, Connecticut General Statutes Section 51-286e(b) imposes on prosecutors certain victim notification obligations, under limited circumstances. If the obligations of state prosecutors are to be expanded, it would seem the more appropriate method for doing so would be via amendment of that statutory provision, not amendment of the Rules of Professional Conduct.

In addition, the language proposed to be added to Rule 3.8 is quite vague. For example, it is unclear what would constitute "reasonable efforts" or a "reasonable opportunity." It is also not entirely clear what rights and procedures are intended to be captured within this proposed new obligation. Thus, we believe the proposed Rule change could lead to unfounded disciplinary complaints against prosecutors in the State.

I plan to attend the October 21, 2019, meeting of the Rules Committee and will be happy to answer questions the Committee members may have.

Very truly yours,

Marcy Tench Stovall

Legislative Liaison for the Standing Committee on Professional Ethics



Standing Committee on Professional Ethics

From: Del Ciampo, Joseph [mailto:Joseph.DelCiampo@jud.ct.gov]
Sent: Monday, September 23, 2019 5:30 PM
To: Rueckert, Morgan (MRueckert@goodwin.com); trentlalima@gmail.com; Stovall, Marcy
Subject: Referral from the Rules Committee

Dear Attorneys Rueckert, LaLima and Stovall,

Attached is a referral to you from the Rules Committee. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

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NATASHA M. PIERRE, ESQ.
State Victim Advocate

November 13, 2019

Joseph J. Del Ciampo
Counsel to the Rules Committee
State of CT Judicial Branch
Via email to Joseph.DelCiampo@jud.ct.gov

Re: OVA's Proposal for Rule Amendments

Dear Attorney Del Ciampo.

I submitted the following language to amend Procedures in Juvenile Matters (Sec 30a Initial Plea Hearing and Sec 30a-5 Dispositional Hearing) and Procedures in Criminal Matters (Sec 39-7 Notice of Plea Agreement and Sec 43-10 Sentencing Hearing; Procedures to be Followed):

NEW SECTION: If no victim is present at the hearing and a written statement has not been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim. If it is not established that a reasonable attempt has been made to notify the victim, the court shall: (1) reschedule the hearing; or (2) proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement.

This section required further clarification. I submit the following language as an alternative to the above:

Sec 30a and Sec 39-7

- (a) If the victim is not present or has not submitted a written statement, the court shall ascertain from the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case:

- (1) Whether the victim was informed of his or her right to make a statement to the court, orally or in writing, regarding the plea agreement, and, if not whether reasonable measures were undertaken to do so;
 - (2) If the victim elected to provide a statement, whether the victim was notified of the date, place and time of proceeding;
 - (3) If the state has proposed a plea agreement, whether the victim has been informed of his or her right to be provided with the terms of the proposed agreement, orally or in writing;
- (b) If the state's attorney, assistant state's attorney or deputy assistant state's attorney has not established that a reasonable attempt has been made to notify the victim of the foregoing rights, the court shall, unless doing so would violate a jurisdictional requirement or the defendant's substantive rights:
- (1) Reschedule the hearing, or
 - (2) Proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and
- (c) If the victim is present, the court shall inquire whether he or she has been informed of the foregoing rights and shall recess the hearing or undertake appropriate measures if necessary to afford the victim a reasonable opportunity to exercise those rights.

Sec 30a-5 – above language except “disposition” replaces “plea agreement.”

Sec 53-10 – above language except “sentence” replaces “plea agreement.”

Please let me know if you have any questions or concerns. I can be reached at (860) 550-6632 or Natasha.Pierre@ct.gov.

Sincerely,


Natasha M. Pierre, JD, MSW

To: Honorable Andrew McDonald, Chair
Rules Committee of the Superior Court
Supreme Court Building
231 Capitol Avenue
Hartford, CT 06106

From: Honorable Bernadette Conway
Chief Administrative Judge for Juvenile Matters
239 Whalley Avenue
New Haven, CT 06511

Date: November 18, 2019

Re: **OVA's Proposed Rule Changes to the Rules of Professional Conduct and the CT Practice Book**

Thank you for the opportunity to comment on the OVA's proposals. Obviously, delinquency proceedings are different than criminal proceedings and although some similarities may exist, CT has unique and statutorily set goals for our juvenile justice system.¹ My comments

¹**CGS §46b-121h. Goals of the juvenile justice system.** It is the intent of the General Assembly that the juvenile justice system provide individualized supervision, care, accountability and treatment in a manner consistent with public safety to those juveniles who violate the law. The juvenile justice system shall also promote prevention efforts, through the support of programs and services designed to prevent re-offending. The goals of the juvenile justice system shall be to:

- (1) Hold juveniles accountable to their unlawful behavior;
- (2) Provide secure and therapeutic confinement to those juveniles who present a danger to the community;
- (3) Adequately protect the community and juveniles;
- (4) Provide programs and services that are community-based and in close proximity to the juvenile's community;
- (5) Maintain and support juveniles within their homes whenever possible and appropriate;
- (6) Base probation case planning upon individual risks and needs;
- (7) Include the juvenile's family in case planning;
- (8) Provide supervision and service coordination where appropriate and implement and monitor the case plan in order to discourage reoffending;
- (9) Provide follow-up and community based services to juveniles who are returned to their families or communities;
- (10) Promote the development and implementation of community-based programs designed to prevent reoffending and to effectively minimize the depth and duration of the juvenile's involvement in the juvenile justice system, and;
- (11) Create and maintain programs for juveniles that (A) are developmentally appropriate,

are meant to address OVA's proposals as they relate only to delinquency proceedings.

OVA Proposal #1: Rule 3.8 of the Rules of Professional Conduct: Special Responsibilities of a Prosecutor

The proposed amendment to Rule 3.8 would explicitly obligate prosecutors to make reasonable efforts to ensure a victim is aware of his/her constitutional rights as set forth in **CGS Sec. 54-85g**. As part of the judiciary, I respectfully decline to opine on this proposal at this time.

OVA Proposal #2: Sec. 30a-1(a) Initial Plea Hearing (In Delinquency Cases)

Substantive and procedural context may prove helpful in discussing this proposal:

P.B. Sec. 30a-1 (a) sets forth the scope of an initial delinquency plea hearing, (sometimes referred to as 'the arraignment hearing'). The arraigning judge, on the record, requests the parties, the lawyers and others present in the courtroom to identify themselves and to state their relation or connection to the child, thereby ensuring only necessary parties are present in the closed proceedings.² A victim's courtroom presence is explicitly governed by **CGS 46b-122 (b)**: a victim's presence shall only be prohibited if: ". . .after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise."³

In terms of victim notification, the Judicial Branch has in place statewide procedures and policies regarding victim notification in delinquency proceedings. At the inception of a delinquency case, the case is entered into the **Court Management Information System, CMIS**. At the time of intake, the Judicial Branch's CSSD probation staff is tasked with ensuring that a standardized victim notification letter/packet is mailed to the victim(s). Victims' mailing addresses are obtained from the police reports or warrants supplied by law enforcement. If there is no victim response within ten days, a second CMIS generated victim notification letter/packet is mailed within three business days.

In some instances, (e.g. domestic violence cases or if a judge orders a child detained pending arraignment on a delinquency charge), the child may be arraigned in court on a charge(s) as soon as the next day or the next day court is in session. Arresting (referring) authorities are required to timely transmit or submit their supporting police reports and other accompanying paper work to

trauma informed and gender responsive, and (B) incorporate restorative principles and practices.

²CGS§46b-122 (a) "All matters which are juvenile matters, . . .shall be kept separate from all other business of the Superior Court as far as is practicable. . ."

³At the initial plea hearing the judge on the record also advises the child of his/her constitutional rights and the alleged offense(s) the prosecutor is pursuing.

the court to accommodate a next day arraignment. In these next day arraignment cases, probation staff intakes the case on the same day the child is arraigned and therefore the initial victim notification process described above commences on the initial plea date and therefore any in-court inquiry regarding victim notification is premature.

In other instances, **P.B Sec. 29-2 (b)** requires: "*Petitions alleging delinquency or family with service needs misconduct shall be served or delivered not less than seven days before the date of the hearing which shall be held not more than thirty days from the date of filing of the petition.*" The arresting agency specifies on the arresting document (often called a summons) the date and time the child is ordered to appear in court. The child and/or parent/guardian, in writing, acknowledges being informed of the future court date.⁴ CSSD's commencement of the victim notification process described above is dictated by the police-ascribed plea date AND how quickly law enforcement transmits the arresting paperwork to the court. Depending on the timing by law enforcement, CSSD may or may not have commenced/completed victim notification by the initial plea date.

If OVA's proposal #2 contemplates that for initial plea hearings, victims be 'served' or accorded the same notice as the accused child, such notification would require statutory language to that effect. From a logistical standpoint, the arresting or referring agency, usually the police would have to assume responsibility for effectuating proper victim service or notice. Imposing such a requirement on law enforcement needs to be carefully considered. I do not support any legislative or procedural changes that delay or postpone initial plea hearings. Once a child has been referred to the juvenile justice system, it is in the best interests of the child and the community that the existing time line be adhered to.

OVA's Proposal #3: Sec. 30a-5 Dispositional Hearing⁵

Existing juvenile rules and practices may assist in analyzing this proposal.

PB 30a-6-- Statement on Behalf of Victim: "*Whenever a victim of a delinquent act, the parent or guardian of such victim or such victim's counsel exercises the right to appear before the judicial authority for the purpose of making a statement to the judicial authority concerning the disposition of the case, no statement shall be received unless the delinquent has signed a statement of responsibility, confirmed a plea agreement or been convicted as a delinquent.*"

Rule 30a-6 speaks to the timing of when a victim may be heard regarding the ultimate disposition of the case. Under our state's statutory scheme, children charged with delinquency offenses are not entitled to be tried by a jury. Therefore, from an evidentiary standpoint, the trial judge ultimately determines whether the state has proven its case by proof beyond a reasonable

⁴Absent proper notice, a child's failure to appear for court may not be deemed willful.

⁵PB 30a-5 presently has subsections (a)-(g). It is unclear why OVA proposal #3 is identified as PB 30a-5 (c)

doubt. Presently the Judicial Branch operates eleven delinquency courts throughout the state and in seven judicial districts, juvenile courthouses are separate from the G.A. or J.D. courthouses.

Generally speaking, the number of judges assigned to hear juvenile cases in each of the eleven jurisdictions is small—in some jurisdictions only one judge, (sometimes with part time assistance from a JTR) routinely handles juvenile matters. **Rule 30a-6** insulates the potential trial judge from being unduly prejudiced as to the ultimate issues of the case, (i.e. guilt/innocence) thereby protecting the accused's pre-adjudicatory (pretrial) rights.

To be clear, **Rule 30a-6** accommodates the victim's constitutional right to be heard⁶, as to other substantive issues (e.g. victim input/feedback as to potential conditions of pre-adjudication release, requests for restitution and no contact with the victim or victim's family orders) at any and all points in a delinquency proceeding. **Rule 30a-6** effectively affords constitutional protection to both the pre-adjudicated accused child and the victim. Any proposal that enhances or expands a victim's right to be heard on the ultimate issues, pre-adjudication, potentially jeopardizes an accused child's pre trial rights⁷

OVA Proposal #4: Sec 39-7 Notice of Plea Agreement

I defer to the Chief Administrative Judge for Criminal Matters as to this proposal.

OVA Proposal #5: New language for Sections 30a-1, 30a-5⁸

In so far as OVA proposal #5 pertains to initial plea hearings, victim input on the ultimate issues, preadjudication, has already been discussed. Similarly, effectuation of victim notification by the initial plea hearing presents challenges that would implicate policing practices and potentially require statutory changes.

In arriving at an appropriate resolution of a delinquency case, the court is required to consider a variety of factors. "[T]he impact of the offense on the victim;" [CGS §46b-140 (a) (3)] is one of the ten factors a judge shall consider when disposing of a delinquency case.⁹

⁶See CGS §54-85g

⁷The victim's input regarding the ultimate issues is made known to the court at the time of sentencing in the predispositional study and/or by representations by the prosecutor. In limited cases a judicially employed victim advocate may be involved. It is important to distinguish between a victim's right to be present at juvenile hearings (see CGS§46b-122(b)) and a victim's right to be heard. The latter right may be subject to some limitations in the pretrial or preadjudicative stage of a delinquency case.

⁸Again, I defer to the CAJ for Criminal Matters as to OVA's non-delinquency related proposals.

⁹CGS§46b-140 (a): "In determining the appropriate disposition of a child adjudicated as delinquent, the court shall consider: (1) The child's age and intellectual, cognitive and emotional

It's unclear but it may be that the OVA's #5 proposal in subsection (2) contemplates a final disposition of a delinquency case may be subject to a motion to open the judgement. Such a scenario raises concerns in that:

(1) Adjudicated children who have been identified as needing clinical or programming services, or a locked setting or residential placement need and deserve to know the 'finality' of the delinquency proceeding so they can move on and substantively engage in the court ordered proposed interventions.

(2) The final disposition (sentence) triggers the statutory prescribed time line to appeal.

(3) If proposal #5 is interpreted to mean that at each and every court hearing, regardless of the status of the case, the victim has a right to be heard on all matters, said interpretation may be problematic from a practical and a due process perspective. For instance, a decision to order (rule) that an accused child submit to a clinical evaluation should not necessarily be dependent on victim input or subject to reconsideration if victim input were to be forthcoming. Procedural rulings, such as consolidation of cases or rulings on pre-trial issues or pre-trial discovery rulings, although the victim is entitled to be kept informed of such rulings, it does not necessarily follow the victim has a right to be substantively heard as to all pre-dispositional rulings.

In conclusion, in my opinion existing juvenile statutes and practice book rules embrace and protect victims' constitutional rights in delinquency proceedings. Respectfully, I do not support OVA's changes as outlined in the March 20, 2019 proposal. Feel free to contact me if I can be of any further assistance.

development; (2) the seriousness of the offense, including any aggravating or mitigating factors; (3) the impact of the offense on any victim; (4) the child's record of delinquency; (5) the child's willingness to participate in available programs; (6) the child's prior involvement with the Department of Children and Families as a committed delinquent; (7) the child's prior involvement with juvenile probation; (8) the child's history of participation in and engagement with programming and service interventions; (9) the identified services, programs and interventions that will best address the child's needs and risk of reoffending, as indicated by the risk and needs assessment administered by the Court Support Services Division and any other relevant evidence; and (10) the level of supervision indicated by the risk and needs assessment administered by the Court Support Services Division and any other relevant evidence.

O'Donnell, Shanna

To: Del Ciampo, Joseph
Subject: RE: OVA proposal

From: Pierre, Natasha <Natasha.Pierre@ct.gov>
Sent: Thursday, December 12, 2019 12:08 PM
To: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>
Subject: OVA proposal

Dear Attorney Del Ciampo,

I met with Judge Conroy regarding our proposal and after discussion have decided to withdraw my request to amend Procedures in Juvenile Matters Sec 30a-1 and Sec 30a-5. Due to the 2017 changes, I believe the juvenile system has a sufficient process in place to avoid violating crime victims' rights. I will not be able to attend the Rules Committee meeting on 12/16/19, so please contact me with any questions or concerns.

Natasha M. Pierre, JD, MSW
State Victim Advocate
Office of The Victim Advocate
505 Hudson Street
Hartford, CT 06106
Office: 860-550-6632
Fax: 860-560-7065
www.ct.gov/ova



O'Donnell, Shanna

From: Del Ciampo, Joseph
Sent: Thursday, January 9, 2020 11:03 AM
To: O'Donnell, Shanna
Subject: FW: Proposal before the Rules Committee to Rule 3.8 of the Rules of Professional Conduct and various sections of the Practice Book to ensure the proper treatment and protection of crime victims
Attachments: OVA Victim Notification clean copy updated 12-31-19 (JJD).docx

From: Del Ciampo, Joseph
Sent: Thursday, January 2, 2020 3:14 PM
To: 'Pierre, Natasha' <Natasha.Pierre@ct.gov>
Cc: O'Donnell, Shanna <Shanna.ODonnell@jud.ct.gov>
Subject: Proposal before the Rules Committee to Rule 3.8 of the Rules of Professional Conduct and various sections of the Practice Book to ensure the proper treatment and protection of crime victims

Dear Attorney Pierre,

At its meeting on December 16, 2019, the Rules Committee considered your proposal to amend Rule 3.8 of the Rules of Professional Conduct and various sections of the Practice Book to ensure the proper treatment and protection of crime victims. After discussion, the Committee tabled the proposal until its meeting scheduled for January 13th at 2:00 p.m. in the Supreme Court courtroom. The Committee requests your presence at that meeting.

The Committee also requested that you respond in writing to the comments critical of the proposal and that I coordinate with you to create a revised draft of the proposal that incorporates all of the previous revisions and the withdrawal of portions of the proposal related to the Juvenile Rules.

Attached are the original and revised proposal and the comments on the proposals received by the Rules Committee. Attached also is a draft of the proposal that incorporates all of the previous revisions and the withdrawal of portions of the proposal related to the Juvenile Rules.

Please let me know if you have any questions. Thank you.

Joseph J. Del Ciampo
Director of Legal Services
Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

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OVA Proposals-Combined Version 1-1-2020 (Various versions combined for Rules Committee discussion.)

Rule 3.8 of the Rules of Professional Conduct

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(1) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Make reasonable efforts to assure that the victim, the parent or guardian of such victim or such victim's counsel has been advised of their rights, the procedures for exercising such rights, and are given reasonable opportunity to exercise such rights;

~~[(3)]~~(4) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

~~[(4)]~~(5) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

~~[(5)]~~(6) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

~~[(6)]~~(7) When a prosecutor knows of new and credible evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall, unless a court authorizes delay:

(A) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to a court and an appropriate authority, and

(B) if the conviction was obtained in the prosecutor's jurisdiction, promptly disclose that evidence to the defendant, and a court and an appropriate authority.

Section 39-7 of the Connecticut Practice Book

Sec. 39-7. Notice of Plea Agreement

If a plea agreement has been reached by the parties, which contemplates the entry of a plea of guilty or nolo contendere:

(a) the judicial authority shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. Thereupon the judicial authority may accept or reject the agreement, or may defer his or her decision on acceptance or rejection until there has been an opportunity to consider the presentence report, or may defer it for other reasons[.];

(b) notice of the plea agreement and hearing shall be provided to the victim, the parent or guardian of such victim or such victim's counsel;

(c) If the victim is not present or has not submitted a written statement, the court shall ascertain from the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case:

(1) Whether the victim was informed of his or her right to make a statement to the court, orally or in writing, regarding the disposition, and, if not, whether reasonable measures were undertaken to do so;

(2) If the victim elected to provide a statement, whether the victim was notified of the date, place and time of proceeding;

(3) If the state has proposed a disposition, whether the victim has been informed of his or her right to be provided with the terms of the proposed disposition, orally or in writing;

(d) If the state's attorney, assistant state's attorney or deputy assistant state's attorney has not established that a reasonable attempt has been made to notify the victim of the foregoing rights, the court shall, unless doing so would violate a jurisdictional requirement or the defendant's substantive rights:

(1) Reschedule the hearing, or

(2) Proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and

(e) If the victim is present, the court shall inquire whether he or she has been informed of the foregoing rights and shall recess the hearing or undertake appropriate measures if necessary to afford the victim a reasonable opportunity to exercise those rights.

Section 43-10 of the Connecticut Practice Book

Sec. 43-10. Sentencing Hearing; Procedures To Be Followed

Before imposing a sentence or making any other disposition after the acceptance of a plea of guilty or nolo contendere or upon a verdict or finding of guilty, the judicial authority shall, upon the date previously determined for sentencing, conduct a sentencing hearing as follows:

(1) The judicial authority shall afford the parties an opportunity to be heard and, in its discretion, to present evidence on any matter relevant to the disposition, and to explain or controvert the presentence investigation report, the alternate incarceration assessment report or any other document relied upon by the judicial authority in imposing sentence. When the judicial authority finds that any significant information contained in the presentence report or alternate incarceration assessment report is inaccurate, it shall order the Office of Adult Probation to amend all copies of any such report in its possession and in the clerk's file, and to provide both parties with an amendment containing the corrected information.

(2) The judicial authority shall allow the victim and any other person directly harmed by the commission of the crime a reasonable opportunity to make, orally or in writing, a statement with regard to the sentence to be imposed.

(a) If the victim is not present or has not submitted a written statement, the court shall ascertain from the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case:

(i) Whether the victim was informed of his or her right to make a statement to the court, orally or in writing, regarding the sentence, and, if not, whether reasonable measures were undertaken to do so;

(ii) If the victim elected to provide a statement, whether the victim was notified of the date, place and time of proceeding;

(iii) If the state has proposed a sentence, whether the victim has been informed of his or her right to be provided with the terms of the proposed sentence, orally or in writing;

(b) If the state's attorney, assistant state's attorney or deputy assistant state's attorney has not established that a reasonable attempt has been made to notify the victim of the foregoing rights, the court shall, unless doing so would violate a jurisdictional requirement or the defendant's substantive rights:

(i) Reschedule the hearing, or

(ii) Proceed with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and

(c) If the victim is present, the court shall inquire whether he or she has been informed of the foregoing rights and shall recess the hearing or undertake appropriate measures if necessary to afford the victim a reasonable opportunity to exercise those rights.

- (3) The judicial authority shall allow the defendant a reasonable opportunity to make a personal statement in his or her own behalf and to present any information in mitigation of the sentence.
- (4) In cases where guilt was determined by a plea, the judicial authority shall, pursuant to Section 39-7, be informed by the parties whether there is a plea agreement, and if so, the substance thereof.
- (5) The judicial authority shall impose the sentence in the presence and hearing of the defendant, unless the defendant shall have waived his or her right to be present.
- (6) In cases where sentence review is available, the judicial authority shall state on the record, in the presence of the defendant, the reasons for the sentence imposed.
- (7) In cases where sentence review is available and where the defendant files an application for such review, the clerk shall promptly notify the court reporter of such application pursuant to Section 43-24 and the court reporter shall file a copy of the transcript of the sentencing hearing with the review division within sixty days from the date the application for review is filed with the clerk.



NATASHA M. PIERRE, ESQ.
State Victim Advocate

Joseph J. Del Ciampo
Counsel to the Rules Committee
State of CT Judicial Branch
Via email to Joseph.DelCiampo@jud.ct.gov

Re: OVA's Response to Comments

Division of Criminal Justice, Office of the Chief State's Attorney

- 1. Re Rule 3.8: Mistakes occur, it's unfair to hold a prosecutor responsible who merely called the file to court.**
All prosecutors must uphold crime victims' rights pursuant to C.G.S. §51-286e. These "mistakes" deny crime victims access to the court and the opportunity to practice their limited rights. Crime victims have a right without a remedy, so when their rights are violated, they cannot seek to reopen the matter and appeal. The right is gone forever.
- 2. Re Rule 3.8: Places an unfair burden on prosecutors when so many other parties play a role in this process.**
Prosecutors must uphold crime victims' rights pursuant to C.G.S. §51-286e. A large percentage of crime victims do not have the assistance of the OVA or OVS court-based advocates. The OVA can file a limited appearance in court on behalf of crime victims when they contact the agency. OVA cannot appear in court without a client. OVS court-based victim advocates can only assist crime victims that have suffered physical injury. If there is no physical injury, the burden is entirely on the prosecutors to provide information to crime victims. If the information is not properly placed in the SAVIN notification system, the OVA, OVS court-based advocates, and crime victims will not receive timely notice.
- 3. Re Rule 3.8: Sanctioning prosecutors is inconsistent with the policy behind C.G.S. §54-224.**
This statute was passed in 1986 and predates the 1996 passage of the Constitutional Amendment that affords crime victims' rights.
- 4. Re Rule 3.8: It completely ignores the role of the Office of the Victim Advocate**
Every crime victim is not represented by the OVA. The OVA provides advocacy to crime victims when a violation of their state constitutional and statutory rights are at issue. If a violation does not occur, the OVA cannot file an appearance. If the OVA is granted a hearing on a violation, the

crime victim's concerns rarely impact the decisions that have already been made because defendant's rights are protected and enforceable. If the court no longer has jurisdiction on the matter, OVA's motion is denied.

The OVA has submitted this proposal pursuant to its charge to:

- Coordinate and cooperate with other private and public agencies concerned with the implementation, monitoring and enforcement of the constitutional rights of victims; and
- Recommend systemic changes in state policies to ensure the proper treatment and protection of crime victims.

- 5. Re Rule 3.8: Office of Victim Services is responsible for providing notification and assistance.**
The OVS provides sufficient notice when the hearing dates are made in advance and are properly logged in the SAVIN notification system. Adequate notice for quick turn-around hearings is not provided. Further, crime victims only receive notice that a hearing is scheduled. Details such as the type of hearing, the plea agreement, and the sentence are not provided via the notification system, rather these matters must be communicated by the prosecutor or court-based victim advocate to the crime victim. The OVS court based advocates can only assist crime victims who were physically injured. All other crime victims must receive information from the prosecutor.

Judge Bernadette Conway

Re Sec 30a-1 and Sec 30a-5: Due to the 2017 changes, I believe the juvenile system has a sufficient process in place to avoid violating crime victims' rights.

CBA Standing Committee on Professional Ethics

Re Rule 3.8: It would impose substantive obligations on prosecutors that do not currently exist.
Prosecutors must uphold crime victims' rights pursuant to C.G.S. §51-286e.

CBA Criminal Justice Section

- 1. Re Rule 3.8: Requirements are redundant and unnecessary.**
Requirements are necessary because crime victims' rights are being violated via the court process. When crime victims are not given information about the case or notification of hearings, pleas agreements, or sentencing, they are not able to practice their rights to be in court hearings, make a victim impact statement, make a statement regarding the plea agreement, or make a statement regarding sentencing. When their rights are violated, they cannot seek to reopen the matter. The right is gone forever.
- 2. Re Rule 3.8: Blurs the line between the prosecution representing the State of Connecticut versus representing individual victims.**
Prosecutors must uphold the accused rights pursuant to Rule 3.8 (2). This responsibility has not raised concerns of blurred lines between the prosecution and defense. Similarly, the OVA proposal, would require the prosecutor to uphold the limited rights of crime victims.

Division of Public Defender Services

- 1. Re Rule 3.8: May infringe on the independence of the prosecutorial authority.**
Prosecutors must uphold the accused rights pursuant to Rule 3.8 (2). This responsibility has not raised concerns regarding the independence of the prosecutorial authority. Similarly, the OVA proposal, would require the prosecutor to uphold the limited rights of crime victims.
- 2. Re Rule 3.8: There are significant processes and procedures currently in place to ensure that victims receive reasonable notice of hearings and are given the opportunity to speak at dispositional hearings.**
Yet the system still fails and crime victims' rights are violated. When crime victims are not given information about the case or notification of hearings, pleas agreements, or sentencing, they are not able to practice their rights to be in court hearings, make a victim impact statement, make a statement regarding the plea agreement, or make a statement regarding sentencing. When their rights are violated, they cannot seek to reopen the matter. The right is gone forever.

CT Criminal Defense Lawyers Association

- 1. Re Rule 3.8: Proposal appears to be redundant of other provisions and a codification of practices that are already in place.**
Requirements are necessary because crime victims' rights are being violated via the court process. When crime victims are not given information about the case or notification of hearings, pleas agreements, or sentencing, they are not able to practice their rights to be in court hearings, make a victim impact statement, make a statement regarding the plea agreement, or make a statement regarding sentencing. When their rights are violated, they cannot seek to reopen the matter. The right is gone forever.
- 2. To create an ethical obligation of a prosecutor that runs directly to a victim has the potential to make the prosecution more about redressing individual rights, than asserting the interests of the State.**
Prosecutors have an ethical obligation to uphold the accused rights pursuant to Rule 3.8(2). This responsibility have not raised concerns regarding individual rights. Similarly, the OVA proposal, would require the prosecutor to uphold the limited rights of crime victims.
- 3. Continuances affect the due process rights of the defendant and improperly prolong detention or otherwise delay resolution.**
Continuances are routinely granted for a variety of reasons unrelated to the case at hand. If the court fails to comply with the constitutional and statutory requirements, a continuance should be granted. Crime victims should not be dismissed because the court system failed to implement the law regarding their rights.

Referenced Statutes/Rules

Sec. 51-286e. Notification of victims re judicial proceedings. (a) For the purposes of this section, "victim" includes the legal representative of the victim or a member of the deceased victim's immediate family.

(b) The state's attorney for a judicial district wherein an offense has been committed shall notify any victim of the offense, if such victim has requested notification and provided the state's attorney with a current address, of any judicial proceedings relating to the victim's case including (1) the arrest of the defendant, (2) the arraignment of the defendant, (3) the release of the defendant pending judicial proceedings, and (4) proceedings in the prosecution of the defendant, including the dismissal of the charges against the defendant, the entry of a nolle prosequi to the charges against the defendant, the entry of a plea of guilty by the defendant, and the trial and sentencing of the defendant.

Rules of Professional Conduct Rule 3.8 (2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.


Constitution of the State of Connecticut, Article XXIX, Rights of Victims of Crime

In all criminal prosecutions, a victim, as the General Assembly may define by law, shall have the following rights:

- The right to be treated with fairness and respect throughout the criminal justice process;
- The right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged;
- The right to be reasonably protected from the accused throughout the criminal justice process;
- The right to notification of court proceedings;
- The right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony;
- The right to communicate with the prosecution;
- The right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused;
- The right to make a statement to the court at sentencing;
- The right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law;
- The right to information about the arrest, conviction, sentence, imprisonment and release of the accused.

The General Assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case.

Respectfully Submitted,


Natasha M. Pierre, JD, MSW

From: Peter Zarella <pzarella@mdmc-law.com>
Sent: Thursday, March 25, 2021 12:26 PM
To: Rules Committee
Subject: Proposed Change to PB 23-1

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

I wish to propose a change to Practice Book § 23-1. Specifically, the rule should be revised to replace "General Statutes §§ 52-417, 52-418 or 52-419" with "Chapter 909 of the General Statutes." The effect of this rule would be make the tried-and-true order to show cause procedures applicable to proceedings under the Revised Uniform Arbitration Act. This would be consistent with the experience of most practitioners, the courts, and purposes of the statutes (which seek to make confirmation/vacatur proceedings as expedient as possible). It would also avoid the current E-Services wrinkles of filing a complaint under the RUAA (E-Services automatically sets the return date as the date of filing, and apparently this cannot be corrected after the fact). Please let me know if you would like further comment or explanation.

Respectfully,

Peter J. Zarella

McElroy Deutsch

Peter Zarella
 Of Counsel

One State Street, 14th Floor
 Hartford, CT 06103

pzarella@mdmc-law.com
 T: (860) 241-2688 F: (860) 522-2796
 mdmc-law.com



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Del Ciampo, Joseph

From: Abrams, James
Sent: Wednesday, September 29, 2021 11:05 AM
To: Del Ciampo, Joseph
Subject: RE: Referral from the Rules Committee of the Superior Court

Joe,

I support measures that would speed up the process of approving arbitration awards and this proposal appears to be in furtherance of that goal.

Jim Abrams

 Hon. James Abrams
 Judge, Superior Court
 Connecticut Judicial Branch
 email: james.abrams@jud.ct.gov

From: Del Ciampo, Joseph
Sent: Tuesday, September 21, 2021 11:25 AM
To: Abrams, James <James.Abrams@jud.ct.gov>; 'Bill Chapman (bchapman@ctbar.org)' <bchapman@ctbar.org>; asavvaides@woolleydon.com; 'jmaloney@cttriallawyers.org' <jmaloney@cttriallawyers.org>
Cc: Marin, Carolina <Carolina.Romanauskas@jud.ct.gov>; Petruzzelli, Lori <Lori.Petruzzelli@jud.ct.gov>
Subject: Referral from the Rules Committee of the Superior Court

Good morning,

At the meeting of the Rules Committee of the Superior Court on September 13, 2021 the Committee considered for the first time a proposal submitted by Attorney Peter J. Zarella to amend Section 23-1 to replace existing language concerning sections of the General Statutes with "Chapter 909 of the General Statutes" to make the order to show cause procedures applicable to proceedings under the Revised Uniform Arbitration Act (RC ID # 2021-008). I have attached a copy of the proposal for your convenience. Video of this meeting is available at <https://youtu.be/JVOJbTevnfw>.

After discussion, the Rules Committee tabled this proposal and referred it for review and comments to Judge Abrams, Chief Administrative Judge, Civil Matters, the Connecticut Bar Association, the Connecticut Trial Lawyers Association and any other organizations that would be appropriate to solicit input from. Please let me know if there is another contact person from your organization who should be included on this type of email in the future.

Please send any comments that your organization would like to make on this proposal to RulesCommittee@jud.ct.gov as soon as possible. The next meeting of the Rules Committee is currently scheduled for October 18, 2021.

Generally, the materials for Rules Committee proposals are not posted publicly to any website or available online at this time. If you need materials related this or any other proposal in the future, they may be requested from External Affairs at External.Affairs@jud.ct.gov

Thank you.

-Joe

Joseph J. Del Ciampo
Director of Legal Services
Connecticut Judicial Branch
100 Washington Street
Hartford, Connecticut 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120
Fax: (860) 566-3449

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Del Ciampo, Joseph

From: Bill Chapman <bchapman@ctbar.org>
Sent: Thursday, October 14, 2021 12:16 PM
To: Del Ciampo, Joseph
Cc: David Reif ; Houston Putnam Lowry, Esq. - Chartered Arbitrator ; Charles Pillsbury
Subject: Rules Committee ... Practice Book Rule 23-1 ... Zarella proposal

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Attorney DelCiampo:

Though noting this Monday's meeting is canceled, I do forward comment on a proposal from the September 13 Rules Committee meeting.

The Executive Committee of the CBA Alternative Dispute Resolution Section has discussed the proposed change to Practice Book Rule 23-1.

Attorney Peter Zarella's original proposed revision was replacing "General Statutes §§ 52-417, 52-418 or 52-419" with "Chapter 909 of the General Statutes." The ADR Section voted unanimously in favor of the revision to the rule with one minor change. We suggest "General Statutes §§ 52-417, 52-418 or 52-419" should be replaced with "Chapters 862 and 909 of the General Statutes." This is exactly the same revision to Rule 23-1 proposed by the CBA International Law section as reflected in Houston Putnam Lowry's prior email sent to your attention.

Chapter 862 relates to international arbitrations; adding a reference to that Chapter as well as Chapter 909 ensures that there will be consistent standard procedures to be used in CT when initiating an action asking a court to confirm, modify, or vacate an arbitration award. Those same procedures would be available regardless of whether the arbitration agreement was entered prior to passage of the Revised Uniform Arbitration Act (RUAA) in 2018, after the RUAA was passed, or in the international context.

At this time, though requested, there have been no other sections in the CBA weighing in on this issue.

Bill Chapman
Director, Government & Community Relations


Connecticut
Bar Association
Mobile: 860-707-3309
Desk: 860-612-2004
bchapman@ctbar.org
Twitter: @CTBarLeg

RC ID # 2020-011 a
STATE OF CONNECTICUT
SUPERIOR COURT
FOR JUVENILE MATTERS



CHAMBERS OF
BERNADETTE CONWAY
CHIEF ADMINISTRATIVE JUDGE
JUVENILE MATTERS

239 Whalley Avenue NEW HAVEN, CONNECTICUT 06511
TELEPHONE: (203) 786-0337 FAX: (203) 786-0327

April 27, 2021

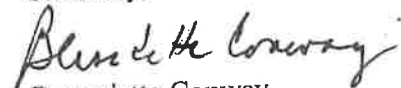
Justice Andrew J. McDonald
Chairman, Rules Committee of the Superior Court
Supreme Court
231 Capitol Avenue
Hartford CT 06160

Dear Justice McDonald,

Attached for your consideration by the Rules Committee are proposed modifications of Practice Book Rules 27-1A and 27-4A, regarding the non-judicial handling of certain delinquency cases. I have attached a two page document outlining the purpose and guiding principles behind the requested changes.

I respectfully request that these proposals be placed on the May 10th Rules Committee Agenda. If said proposals are approved, implementation may be possible in 2021, furthering the Branch's collaborative juvenile justice reform efforts. Please feel free to contact me if I can be of any further assistance. Thank you for your time and attention.

Sincerely,


Bernadette Conway
Chief Administrative Judge
Juvenile Matters

cc. Honorable Patrick L. Carroll III, Chief Court Administrator
Honorable Elizabeth Bozzuto, Deputy Chief Court Administrator
Director, Legal Services, Joseph DelCiampo

Proposed Amendments to Practice Book Sections 27-1A and 27-4a (Re. Non-Judicial Case Handling)

Purpose:

The purpose of these proposed changes is to implement the recommendation of the IOYouth Task Force to more strategically divert juvenile delinquency cases from the formal court process. Current language in the Practice Book restricts the type of cases that can be handled non-judicially based on charge; these proposed changes would require the handling decision to be based on a risk-needs assessment rather than charge.

Background:

In May 2019, Connecticut began participating in the Council for State Governments (CSG) Improving Outcomes for Youth initiative. A Connecticut task force co-chaired by the Secretary of OPM Melissa McCaw and Representative Toni Walker, comprised of representatives from the Judicial and Executive branches, state and local juvenile justice system leaders and juvenile justice advocates, was formed to oversee the effort.

CSG conducted a comprehensive assessment of Connecticut's juvenile justice system, which resulted in a number of recommendations that were formally adopted by the Task Force in August 2020.

Guiding Principles

The purpose of the IOYouth initiative is to help states align their policies, practices and resource allocation with what research shows works to improve outcomes for youth and improve public safety, as articulated in the following research-based principles:

- Youth's assessed risk of reoffending, rather than the nature of youth's offenses, is the best predictor of future reoffending. When juvenile court decisions are based primarily on subjective professional judgement, this can lead to inconsistency and unintended bias. Use of a validated risk instrument, relying on structured actuarial data, increases predictive accuracy.
- Formal system involvement can increase, rather than decrease, low risk youth's risk of re-offending; low risk clients require little to no formal system intervention.
- Formal supervision and treatment resources should be prioritized for higher risk clients.
- A disproportionate number of delinquent youth have unmet behavioral health needs, including trauma. The juvenile justice system should not serve as the primary provider for treatment services, but can facilitate connections to community providers.

Implementation:

The implementation phase of the project began in September 2020. Many of the diversion recommendations focus on the work of Juvenile Probation Services, as follows:

- Juvenile Probation will screen all juvenile referrals for risk of recidivism and behavioral health needs in order to achieve the following goals:
 - Preserve court time and resources for only the highest risk youth;
 - Divert all low risk youth away from formal system involvement;

- Use objective, data informed risk screening to reduce the disparate treatment of youth of color within the juvenile court system;
 - Match youth pre and post disposition with the most appropriate level, type, and quality of supervision and services to reduce future reoffending;
 - Ensure youth repair any harm caused to victims and communities.
- Based on the results of the risk and need screening, cases coming into court will be handled as follows:
 - **Low-Risk Youth:** All youth screened as low-risk (with exceptions for youth who commit serious/violent offenses) will be *diverted from any form of judicial/non-judicial supervision*. As needed, JPOs will refer diverted youth and their families to a local Juvenile Review Board, mental health treatment provider, or any other community-based agency offering needed services.
 - **Moderate Risk Youth:** Most youth screened as moderate risk will be designated for *Non-Judicial supervision*. The JPO will create an intervention plan with input from both the child and parent/guardian, apply restorative justice principles and risk-reduction strategies, and levels of supervision will be tailored to the individual youth's assessed risk. Youth on Non-Judicial supervision have access to all CSSD contracted services.
 - **High-Risk Youth:** All youth screened as high-risk will be referred for formal court involvement, and if adjudicated and agreed to by the court, disposed to *Judicial Supervision*. These youth will receive the most intensive supervision and services available.
 - **Youth with Behavioral Health Needs:** Youth with behavioral health needs will be referred to local mental health services for further evaluation and treatment.
 - **Victims:** Victims' rights will be preserved throughout. Victims will receive written notification of their rights, even in those cases that were diverted from formal system intervention. Victims wishing to participate in restorative justice interventions will be offered the opportunity to do so.

Proposed Amendment to

Practice Book Sections 27-1A and 27-4a (Re. Non-Judicial Case Handling)

Sec. 27-1A. Referrals for Nonjudicial Handling of Delinquency Complaints (Amended June 30, 2008, to take effect Jan. 1, 2009.)

(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 assigned probation officer (*or should this be supervisor?*) determines that a delinquency complaint is eligible for nonjudicial handling, the 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 arraignment 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. (Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 30, 2008, to take effect Jan. 1, 2009.)

Sec. 27-4A. Ineligibility for Nonjudicial Handling or Diversion of Delinquency Complaint (Amended June 30, 2008, to take effect Jan. 1, 2009.)

In the case of a delinquency complaint, a child shall not be eligible for nonjudicial handling 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~~ (B) a violent felony; or

~~(C) a violation of General Statutes § 53a-54d ; or] ; (B) concerns the theft or unlawful use or operation of a motor vehicle; or (C) concerns the sale of, or possession of with intent to sell, any illegal drugs or the use or possession of a firearm. (2) The child was previously adjudicated delinquent or adjudged a child from a family with service needs. (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.] (~~

Proposed Amendment to

Practice Book Sections 27-1A and 27-4a (Re. Non-Judicial Case Handling)

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(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..

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~~violent-felony; or (C) a violation of General Statutes § 53a-54d; (B) concerns the theft or unlawful use or operation of a motor vehicle; or (C) concerns the sale of, or possession of with intent to sell, any illegal drugs or the use or possession of a firearm. (2) The child was previously adjudicated delinquent or adjudged a child from a family with service needs. (3) The child admitted nonjudicially at least twice previously to having been delinquent. (4)] or (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:] (~~

Marin, Carolina

Subject: RE: suggest rules changes

From: Noble, Cesar
Sent: Tuesday, June 15, 2021 3:05 PM
To: McDonald, Andrew
Subject: suggest rules changes

Andrew:

I hope all is well with you and that you have survived this pandemic as well as possible. I am sitting on a jury trial (Joy and Rapture!) involving a premises liability claim. It struck me that our standard jury interrogatories Form 203 and Form 206 of the requests for production should include an inquiry into whether there was an agreement for snow and ice removal and the existence of a contract for same. I have taken the liberty of drafting some suggested language as attached. I thank you and the committee for considering these additions and hope you have a great summer

Hon. Cesar A. Noble
Judge, Superior Court

Premises Liability Standard form discovery

Interrogatories

X. State whether a contract existed for snow and ice remediation for the location on which the plaintiff claims to have been injured.

Y. State whether you received or prepared any invoices or records related to snow and/or ice remediation for the location on which the plaintiff claims to have been injured for the 30 days prior to the date on which the plaintiff claims to have been injured.

Request for Production

£. A copy of any contract identified in response to Interrogatory #X.

€. A copy of any documents identified in response to Interrogatory # Y.

Form 203

**Plaintiff's Interrogatories
Premises Liability Cases**

No. CV-
(Plaintiff)
VS.
(Defendant)

: SUPERIOR COURT
: JUDICIAL DISTRICT OF
: AT
: (Date)

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within sixty (60) days of the filing hereof in compliance with Practice Book Section 13-2.

In answering these interrogatories, the Defendant(s) is (are) required to provide all information within their knowledge, possession or power. If an interrogatory has subparts, answer each subpart separately and in full and do not limit the answer to the interrogatory as a whole. If any interrogatories cannot be answered in full, answer to the extent possible.

(1) Identify the person(s) who, at the time of the Plaintiff's alleged injury, owned the premises where the Plaintiff claims to have been injured.

(a) If the owner is a natural person, please state:

(i) your name and any other name by which you have been known;

(ii) your date of birth;

(iii) your home address;

(iv) your business address.

(b) If the owner is not a natural person, please state:

(i) your name and any other name by which you have been known;

(ii) your business address;

(iii) the nature of your business entity (corporation, partnership, etc.);

(iv) whether you are registered to do business in Connecticut;

(v) the name of the manager of the property, if applicable.

(2) Identify the person(s) who, at the time of the Plaintiff's alleged injury, had a possessory interest (e.g., tenants) in the premises where the Plaintiff claims to have been injured.

(3) Identify the person(s) responsible for the maintenance and inspection of the premises at the time and place where the Plaintiff claims to have been injured.

(4) State whether you had in effect at the time of the Plaintiff's injuries any written policies or procedures that relate to the kind of conduct or condition the Plaintiff alleges caused the injury.

(5) State whether it is your business practice to prepare, or to obtain from your employees, a written report of the circumstances surrounding injuries sustained by persons on the subject premises.

(6) State whether any written report of the incident described in the Complaint was prepared by you or your employees in the regular course of business.

(7) State whether any warnings or caution signs or barriers were erected at or near the scene of the incident at the time the Plaintiff claims to have been injured.

(8) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name, address and employer of the person who erected the warning or caution signs or barriers;

(b) the name, address and employer who instructed the person to erect the warning or caution signs or barriers;

(c) the time and date a sign or barrier was erected;

(d) the size of the sign or barrier and wording that appeared thereon.

(9) State whether you received, at any time within twenty-four (24) months before the incident described by the Plaintiff, complaints from anyone about the defect or condition that the Plaintiff claims caused the Plaintiff's injury.

(10) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name and address of the person who made the complaint;

(b) the name, address and person to whom said complaint was made;

(c) whether the complaint was in writing;

(d) the nature of the complaint.

(11) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

(12) Are you aware of any photographs or any recordings by film, video, audio or any other digital or electronic means depicting the incident alleged in the Complaint, the scene of the incident, or any condition or injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs or each recording taken, obtained or prepared of each such subject, please state:

(a) the name and address of the person who took, obtained or prepared such photograph or recording, other than an expert who will not testify at trial;

(b) the dates on which such photographs were taken or such recordings were obtained or prepared;

(c) the subject (e.g., "scene of incident," etc.);

(d) the number of photographs or recordings;

(e) the nature of the recording (e.g., film, video, audio, etc.).

(13)-(23) (Interrogatories #1 (a) through (e), #2 through #5, #7, #8, #9, #12, #13 and #16 of Form 201 may be used to complete this standard set of interrogatories.)

PLAINTIFF,

BY _____

CERTIFICATION

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to*

*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

Signed (*Signature of filer*) Print or type name of person signing Date Signed

Mailing address (*Number, street, town, state and zip code*) or E-mail address, if applicable Telephone number

(P.B. 1978-1997, Form 106.10C.) (Amended June 20, 2005, to take effect Jan. 1, 2006; amended June 29, 2007, to take effect Jan. 1, 2008; amended June 22, 2009, to take effect Jan. 1, 2010; amended June 14, 2013, to take effect Jan. 1, 2014; amended June 13, 2014, to take effect Jan. 1, 2015; amended June 24, 2016, to take effect Jan. 1, 2017; amended June 23, 2017, to take effect Jan. 1, 2018.)

Form 206

Plaintiff's Requests for Production—Premises Liability

No. CV-
(Plaintiff)
VS.
(Defendant)

: SUPERIOR COURT
: JUDICIAL DISTRICT OF
: AT
: (Date)

The Plaintiff hereby requests that the Defendant provide counsel for the Plaintiff with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on _____ (day), _____ (date) at _____ (time).

In answering these production requests, the Defendant(s) are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

- (1) A copy of the policies or procedures identified in response to Interrogatory #4.
- (2) A copy of the report identified in response to Interrogatory #6.
- (3) A copy of any written complaints identified in Interrogatory #10.
- (4) A copy of declaration page(s) evidencing the insurance policy or policies identified in response to Interrogatories numbered _____ and _____.
- (5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter.
- (6) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.
- (7) A copy of any photographs or recordings, identified in response to Interrogatory #12.
- (8) A copy of any written leases(s) and any amendments or extensions to such lease(s) for the premises where the plaintiff claims to have been injured in effect at the time of the Plaintiff's injury between you and the person or entity identified in Interrogatory #2.
- (9) A copy of any written contract or agreement regarding the maintenance and inspection of the premises where the plaintiff claims to have been injured in effect at the time of the Plaintiff's injury between you and the person or entity identified in Interrogatory #3.

PLAINTIFF,

BY _____

CERTIFICATION

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to*

*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

Signed (<i>Signature of filer</i>)	Print or type name of person signing	Date Signed
--------------------------------------	--------------------------------------	-------------

Mailing address (<i>Number, street, town, state and zip code</i>) or E-mail address, if applicable	Telephone number
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(P.B. 1978-1997, Form 106.11C.) (Amended June 29, 2007, to take effect Jan. 1, 2008; amended June 14, 2013, to take effect Jan. 1, 2014; amended June 13, 2014, to take effect Jan. 1, 2015; amended June 24, 2016, to take effect Jan. 1, 2017; amended June 23, 2017, to take effect Jan. 1, 2018.)

Del Ciampo, Joseph

From: Abrams, James
Sent: Tuesday, September 21, 2021 2:23 PM
To: Del Ciampo, Joseph
Subject: RE: Referral from the Superior Court Rules Committee

Joe,

I think Judge Noble's idea regarding the Premises Liability discovery requests is excellent.

Jim Abrams

 Hon. James Abrams
 Judge, Superior Court
 Connecticut Judicial Branch
 email: james.abrams@jud.ct.gov

From: Del Ciampo, Joseph
Sent: Tuesday, September 21, 2021 1:46 PM
To: Abrams, James <James.Abrams@jud.ct.gov>; 'Bill Chapman (bchapman@ctbar.org)' <bchapman@ctbar.org>; asavvaides@wocleydon.com; 'jmaloney@cttriallawyers.org' <jmaloney@cttriallawyers.org>; eric.niederer@wilsonelser.com
Cc: Petruzzelli, Lori <Lori.Petruzzelli@jud.ct.gov>; Marin, Carolina <Carolina.Romanauskas@jud.ct.gov>
Subject: Referral from the Superior Court Rules Committee
Importance: High

Good afternoon,

At the meeting of the Rules Committee of the Superior Court on September 13, 2021, the Committee considered a proposal submitted by Judge Noble to revise the standard premises liability interrogatories (Practice Book Form 203) and requests for production (Practice Book Form 206) to include whether there was an agreement for snow and ice removal and the existence of a contract for the same (RC ID # 2021-014). I have attached a copy of the proposal for your convenience. Video of the meeting is available at <https://youtu.be/JVOJbTevnfw>.

After discussion, the Committee tabled this proposal until its November 15, 2021, meeting and referred it for review and comment to Judge Abrams, Chief Administrative Judge, Civil Matters, the Connecticut Bar Association, the Connecticut Trial Lawyers Association, and the Connecticut Defense Lawyers Association. Please let me know if there is another contact person from your organization who should be included on this type of email in the future.

Please send any comments that your organization would like to make on this proposal to RulesCommittee@jud.ct.gov as soon as possible.

Generally, the materials for Rules Committee proposals are not posted publicly to any website or available online at this time. If you need materials related this or any other proposal in the future, they may be requested from External Affairs at External.Affairs@jud.ct.gov

Thank you.

Joseph J. Del Ciampo
Director of Legal Services
Connecticut Judicial Branch
100 Washington Street
Hartford, Connecticut 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120
Fax: (860) 566-3449

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CONNECTICUT
TRIAL LAWYERS
ASSOCIATION

November 4, 2021

Rules Committee of the Superior Court
RulesCommittee@jud.ct.gov
State of Connecticut Judicial Branch
100 Washington Street, Third Floor
Hartford, CT 06106

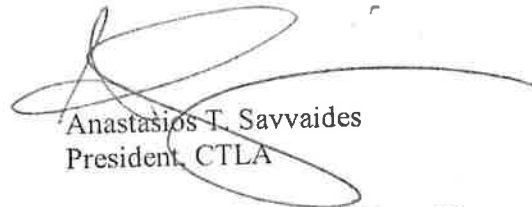
Re: Judge Noble's June 2021 Proposal, Premises Liability Standard Discovery

Dear Members of the Rules Committee:


Thank you for the invitation to comment on Judge Noble's June 15, 2021 proposal to the Rules Committee concerning the standard premises liability discovery.

CTLA strongly supports the proposal. To the extent it is helpful, we attach a proposed redline of Forms 203 and 206 integrating the proposal.


Sincerely,



Anastasios T. Savvaides
President, CTLA



Alinor C. Sterling
Co-Chair, CTLA Rules Committee



Marco A. Allocca
Co-Chair, CTLA Rules Committee

/dg

**Plaintiff's Interrogatories
Premises Liability Cases**

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

The undersigned, on behalf of the Plaintiff, hereby propounds the following interrogatories to be answered by the Defendant, _____, under oath, within sixty (60) days of the filing hereof in compliance with Practice Book Section 13-2.

In answering these interrogatories, the Defendant(s) is (are) required to provide all information within their knowledge, possession or power. If an interrogatory has subparts, answer each subpart separately and in full and do not limit the answer to the interrogatory as a whole. If any interrogatories cannot be answered in full, answer to the extent possible.

(1) Identify the person(s) who, at the time of the Plaintiff's alleged injury, owned the premises where the Plaintiff claims to have been injured.

(a) If the owner is a natural person, please state:

- (i) your name and any other name by which you have been known;
- (ii) your date of birth;
- (iii) your home address;
- (iv) your business address.

(b) If the owner is not a natural person, please state:

- (i) your name and any other name by which you have been known;
- (ii) your business address;

(iii) the nature of your business entity (corporation, partnership, etc.);

(iv) whether you are registered to do business in Connecticut;

(v) the name of the manager of the property, if applicable.

(2) Identify the person(s) who, at the time of the Plaintiff's alleged injury, had a possessory interest (e.g., tenants) in the premises where the Plaintiff claims to have been injured.

(3) Identify the person(s) responsible for the maintenance and inspection of the premises at the time and place where the Plaintiff claims to have been injured. "Maintenance and inspection" includes, but is not limited to, snow and ice removal, and other maintenance and inspection related to a particular season or condition or fixture.

(3.5) State whether you received or prepared any invoices or records related to such maintenance and inspection for the 30 days prior to the date on which the Plaintiff claims to have been injured.

(4) State whether you had in effect at the time of the Plaintiff's injuries any written policies or procedures or contracts that relate to the kind of conduct or condition the Plaintiff alleges caused the injury.

(5) State whether it is your business practice to prepare, or to obtain from your employees, a written report of the circumstances surrounding injuries sustained by persons on the subject premises.

(6) State whether any written report of the incident described in the Complaint was prepared by you or your employees in the regular course of business.

(7) State whether any warnings or caution signs or barriers were erected at or near the scene of the incident at the time the Plaintiff claims to have been injured.

(8) If the answer to the previous interrogatory is in the affirmative, please state:

(a) the name, address and employer of the person who erected the warning or caution signs or barriers;

(b) the name, address and employer who instructed the person to erect the warning or caution signs or barriers;

- (c) the time and date a sign or barrier was erected;
- (d) the size of the sign or barrier and wording that appeared thereon.

(9) State whether you received, at any time within twenty-four (24) months before the incident described by the Plaintiff, complaints from anyone about the defect or condition that the Plaintiff claims caused the Plaintiff's injury,

(10) If the answer to the previous interrogatory is in the affirmative, please state:

- (a) the name and address of the person who made the complaint;
- (b) the name, address and person to whom said complaint was made;
- (c) whether the complaint was in writing;
- (d) the nature of the complaint.

(11) Please identify surveillance material discoverable under Practice Book Section 13-3 (c), by stating the name and address of any person who obtained or prepared any and all recordings, by film, photograph, videotape, audiotape or any other digital or electronic means, of any party concerning this lawsuit or its subject matter, including any transcript thereof which are in your possession or control or in the possession or control of your attorney, and state the date on which each such recordings were obtained and the person or persons of whom each such recording was made.

(12) Are you aware of any photographs or any recordings by film, video, audio or any other digital or electronic means depicting the incident alleged in the Complaint, the scene of the incident, or any condition or injury alleged to have been caused by the incident alleged in the Complaint? If so, for each set of photographs or each recording taken, obtained or prepared of each such subject, please state:

- (a) the name and address of the person who took, obtained or prepared such photographs or recording, other than an expert who will not testify at trial;
- (b) the dates on which such photographs were taken or such recordings were obtained or prepared;
- (c) the subject (e.g., "scene of incident," etc.);

- (d) the number of photographs or recordings;
- (e) the nature of the recording (e.g., film, video, audio, etc.).

(13)-(23) (Interrogatories #1 (a) through (e), #2 through #5, #7, #8, #9, #12, #13 and #16 of Form 201 may be used to complete this standard set of interrogatories.)

PLAINTIFF,

BY _____

CERTIFICATION

I hereby certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to*

*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

Signed (*Signature of filer*) Print or type name of person signing Date Signed

Mailing address (Number, street, town, state & zip code) or E-mail address, if applicable Telephone No.

Plaintiff's Requests for Production—Premises Liability

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

The Plaintiff hereby requests that the Defendant provide counsel for the Plaintiff with copies of the documents described in the following requests for production, or afford counsel for said Plaintiff the opportunity or, if necessary, sufficient written authorization, to inspect, copy, photograph or otherwise reproduce said documents. The production of such documents, copies or written authorization shall take place at the offices of _____ on _____ (day), _____ (date) at _____ (time).

In answering these production requests, the Defendant(s) are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.

- (1) A copy of the policies or procedures or contracts identified in response to Interrogatory #4.
- (2) A copy of the report identified in response to Interrogatory #6.
- (3) A copy of any written complaints identified in Interrogatory #10.
- (4) A copy of declaration page(s) evidencing the insurance policy or policies identified in response to Interrogatories numbered _____ and _____.
- (5) A copy of any nonprivileged statement, as defined in Practice Book Section 13-1, of any party in this lawsuit concerning this action or its subject matter,
- (6) A copy of each and every recording of surveillance material discoverable under Practice Book Section 13-3 (c), by film, photograph, videotape, audiotape or any other digital or electronic means, of any party to this lawsuit concerning this lawsuit or the subject matter thereof, including any transcript of such recording.
- (7) A copy of any photographs or recordings, identified in response to Interrogatory #12.

(8) A copy of any written lease(s) and any amendments or extensions to such lease(s) for the premises where the Plaintiff claims to have been injured in effect at the time of the Plaintiff's injury between you and the person or entity identified in Interrogatory #2.

(9) A copy of any written contract or agreement regarding the maintenance and inspection of the premises where the Plaintiff claims to have been injured in effect at the time of the Plaintiff's injury between you and the person or entity identified in Interrogatory #3.

(10) A copy of any invoice or report identified in response to Interrogatory #3.5.

PLAINTIFF,

BY _____

CERTIFICATION

I hereby certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to*

*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

Signed (*Signature of filer*) Print or type name of person signing Date Signed

Mailing address (*Number, street, town, state & zip code*) or E-mail address, if applicable Telephone No.



The Voice of Connecticut's Civil Defense Trial Lawyers

Dear Rules Committee,

Thank you for your invitation and this opportunity to discuss the positions of the Connecticut Defense Lawyers Association (CDLA) as a professional association of civil defense attorneys throughout Connecticut. The CDLA sets forth its following positions and recommendations to the Rules Committee proposals 2021-014a/b and 2021-015 as follows:

2021-014a/b

The CDLA has no concerns or objections to the proposal by The Honorable Cesar Noble to add additional interrogatories and requests for production to Forms 203 and 206, except the bracketed language (in bold for your convenience) be added to prevent any confusion or objections as to relevancy and scope in time, and for consistency through the discovery demands, as follows:

Premises Liability Standard Form Discovery Interrogatories

X. State whether a contract existed for snow and ice remediation for the **[date and]** location on which the plaintiff claims to have been injured.

Y. State whether you received or prepared any invoices or records related to snow and/or ice remediation for the location on which the plaintiff claims to have been injured for the 30 days prior to the date on which the plaintiff claims to have been injured.

Request for Production

£. A copy of any contract identified in response to Interrogatory #X.

€. A copy of any documents identified in response to Interrogatory # Y.

2021-015

Thank you for the opportunity to weigh in on the Final Report of the Task Force which contains recommendations for jury reform in Connecticut, and particularly a general rule on jury selection in an effort to prophylactically remove conscious and unconscious bias consistent with issues discussed in *State v. Holmes*, 334 Conn. 2020 (2019).

Our system guarantees all individuals fair access to the judicial system, including judgment by their peers. Jury selection is a critical judicial process to ensure fairness, access to the

courts and trust in the judicial system in general, whether a spectator, party, witness, juror or society at-large. The CDLA is committed to diversity and inclusion in all aspects of the practice of law, including the selection of prospective jurors. Part of the CDLA's commitment as an organization is to be proactively introspective, self-aware, identify and root out all biases, both conscious and unconscious biases, in ourselves and all members of this noble and critical profession and the judicial branch as an organ of the State of Connecticut.

The genesis of the Task Force was based in the *sua sponte* recommendation of the Connecticut Supreme Court in *State v. Holmes, supra*. Notably, the decision in *Holmes* stemmed from a criminal case and the Supreme Court's decision questioning present-day relations between police and many minority and minority communities. This decision and related discussion did not speak to the practice of civil law in Connecticut, but its decision and proposed general rule on jury selection would affect criminal and civil matters alike in application. In this context, and as members of the legal community at-large, the CDLA wishes to briefly provide some observations for consideration by the Rules Committee.

We note that the recommendation for an expeditious adoption of the rules change is "intended to significantly improve the quality of justice *in our state* by eliminating the unfair exclusion of potential jurors through the use of peremptory challenges based on race or ethnicity." [Emphasis added.] However, the Report of the Jury Selection Task Force indicates that it would like to *start* collecting data on jury selection to determine when and how bias may impact the fair and full access to the courts by prospective jurors and parties to have their cases decided by a jury of their peers without undue or unlawful exclusion. There is no indication we know of in Connecticut where data has been collected or relied upon which evidences implicit bias based on race or ethnicity during the jury selection process, especially in the *civil* jury selection process, by the lawyers in our State. We agree data collection is necessary to determine if there is an issue, like this important issue, which needs to be fixed, the scope of that issue and how best to accomplish that noble goal through the analysis of data. We also note that the Task Force adopted the research on implicit bias from the *Holmes* decision, but it does not appear to have assessed the sources or independently determine what, if any, research is applicable to the jury selection process by the members of the Connecticut Bar. The CDLA would be most interested in any data applicable to our jury selection process; and, if an issue is found, then address it quickly and appropriately based on the analysis of the applicable data. A general rule, like the one proposed, of such critical importance should address a data-driven and defined issue applicable to the administration of justice in this State, rather than perceptions which may risk overreach or create collateral issues.

A concern we have in the current proposed General Rule subsection (e) is the presumption that the trial judge is put in the position of an "objective observer" which is defined to include that he or she "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." [Emphasis added.] That language combined with the additional language in subsection (g) which states that "[b]ecause 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 ...” [emphasis added], and the contemporary creation and sought application of the proposed General Rule, it may be viewed as stating members admitted to the Bar in Connecticut have to the present improperly and systemically excluded prospective jurors on the basis of racial or ethnic identification. A statement in the proposed General Rule that there has been purposeful discrimination and implicit biases which has influenced attorneys’ decisions without any evidence of the same is a serious and negative commentary on the members of the Connecticut Bar who practice and conduct themselves in a professional and unbiased manner. Again, we are not aware of any data that has been collected that supports this latter statement as it applies to Connecticut, but we would be very interested in the collection of such data and creation of a general rule on jury selection as indicated by the findings from such data.

For these reasons, we would recommend the Rules Committee first obtain and collect its data on jury selection so that it can analyze it and then make an informed and data-based decision before moving forward with the implementation of the proposed rule changes in the absence of such data.

Once again, we appreciate the opportunity to provide some commentary and are available to discuss this extremely important and vital issue.

Respectfully submitted,

/s/ Eric W.F. Niederer, Esq.
Eric W. F. Niederer, President
Connecticut Defense Lawyers Association

As approved by the CDLA Board