

On Monday, May 20, 2013, at 10:00 a.m. the Rules Committee conducted a public hearing in the Supreme Court courtroom to receive comments concerning proposed revisions to the Practice Book. At the conclusion of the public hearing the Committee met in the Supreme Court courtroom from 10:45 a.m. to 11:48 a.m. Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. WILLIAM M. BRIGHT, JR.
HON. JULIETT L. CRAWFORD
HON. KARI A. DOOLEY
HON. RICHARD W. DYER
HON. ELIOT D. PRESCOTT

The Honorable Maureen M. Keegan, Barbara N. Bellis and Jon M. Alander were not in attendance at this meeting.

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

1. The Committee approved, with Judge Bright abstaining, the minutes of the meeting held on March 25, 2013.

2. The Committee considered a proposal by Attorney Joseph Del Ciampo to amend various family support magistrate rules to make them consistent with certain proposed Practice Book revisions that were approved by the Rules Committee at a prior meeting.

After discussion, the Committee unanimously voted to amend Sections 25a-1 and 25a-3 as set forth in Appendix A attached hereto.

3. The Committee considered a proposal by Chief Disciplinary Counsel Patricia King and Statewide Bar Counsel Michael Bowler to amend the proposed revision to Section 2-53 concerning reinstatement after suspension, disbarment, or resignation and a letter from Attorney Barry C. Hawkins, President of the CBA, concerning this proposal.

After discussion, the Committee unanimously voted to further amend the proposed revision to Section 2-53 as set forth in Appendix B attached hereto.

4. The Committee considered a proposal by Judge Kenneth Povodator to amend the proposed revision to Section 14-7 by changing "board of tax review" to "board of assessment

appeals” in light of PA 95-283.

After discussion, the Committee further revised his proposal and unanimously voted to further amend the proposed revision to Section 14-7 as set forth in Appendix C attached hereto.

5. At a prior meeting, the Rules Committee asked the undersigned to forward to Judge Thomas Bishop, Chair of the Code of Evidence Oversight Committee, a proposal by Thomas Gaffey, Chief Counsel of the Office of the Probate Court Administrator, to amend the commentary to Section 1-1 of the Code of Evidence with regard to the application of the rules of evidence to the probate courts.

At this meeting, the Committee considered Judge Bishop’s response.

After discussion, the Committee asked the undersigned to advise the Probate Court Rules Committee (PCRC) that in lieu of amending the Code of Evidence the PCRC should include in the Probate Court rules any rules of evidence they deem appropriate.

6. The Committee considered a proposal by Judge Jane Scholl to further amend the proposed revision to Section 17-25 concerning motions for default and judgment to provide that if any documents are attached to the affidavit of debt, the affidavit contain a statement that such documents are true copies of the originals.

After discussion, the Committee unanimously voted to further amend the proposed revision to Section 17-25 as set forth in Appendix D attached hereto.

7. The Committee considered a proposal by Attorney Joseph Del Ciampo to further amend the proposed revision to Section 3-9 concerning withdrawals of appearance.

After discussion, the Committee unanimously voted to further amend the proposed revision to Section 3-9 as set forth in Appendix E attached hereto.

8. The Committee considered comments submitted by Attorney Joanne S. Faulkner concerning the proposed revisions to Section 17-25.

The Committee unanimously denied her proposal to add the word “admissible” to subsection (b) (1) of that rule and decided to forward the balance of her proposal to the Civil Commission for comment.

9. The Committee considered a proposal submitted by Attorney Raphael L. Podolsky on behalf of the Legal Assistance Resource Center of Connecticut to further amend the proposed revisions to Sections 17-25 and 17-33.

After discussion, the Committee unanimously decided not to make these proposed changes.

10. The Committee considered a proposal submitted by Attorney Stephanie A. Jackson on behalf of Aderant CompuLaw to further amend the proposed revisions to Sections 10-31 (a) and 10-40 (a).

After discussion, the Committee unanimously voted to further amend the proposed revisions to Sections 10-31 and 10-40 as set forth in Appendix F attached hereto.

11. The Committee considered a proposal by Attorney Mark S. Rosenblit to further amend the proposed revision to Section 10-8.

After discussion, the Committee unanimously voted to further amend the proposed revision to Section 10-8 as set forth in Appendix G attached hereto.

12. At the public hearing earlier in the day, Attorney Marcy Stovall, on behalf of the CBA Professional Ethics Committee, proposed further amendments to the proposed revisions to the commentaries to Rules 1.0 and 1.10 of the Rules of Professional Conduct to correct references in those commentaries.

After discussion, the Committee unanimously voted to further amend the proposed revisions to the commentaries to Rules 1.0 and 1.10 of the Rules of Professional Conduct as set forth in Appendix H attached hereto.

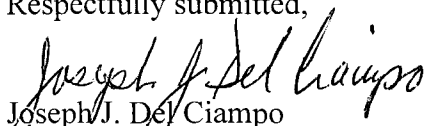
13. The Committee considered a proposal made by Attorney Joel Ellis at the public hearing to amend Section 10-39 concerning motions to strike to provide that if there is an objection to the motion to strike, the memorandum in support of the motion can be consulted by the court.

After discussion, the Committee decided to refer the proposal to the Civil Commission for its review and comment.

14. The undersigned advised the Committee that the second page of proposed Practice Book Form 210 was erroneously omitted from the Rules Committee proposals that were published in the April 30 issue of the Law Journal. The Committee agreed that the second page of that form should be added to the proposals that are to be submitted to the judges for adoption at the June judges' meeting.

15. The Committee determined that a meeting should be scheduled with the Judiciary Committee in June, preferably June 3.

Respectfully submitted,


Joseph J. De Ciampo
Counsel to the Rules Committee

JJD:pt
Attachments

APPENDIX A (052013mins)

Sec. 25a-1. Family Support Magistrate Matters; Procedure

(a) In addition to the specific procedures set out in this chapter, the following provisions shall govern the practice and procedure in all family support magistrate matters, whether heard by a family support magistrate or any other judicial authority. The term "judicial authority" and the word "judge" as used in the rules referenced in this section shall include family support magistrates where applicable, unless specifically otherwise designated. The word "complaint" as used in the rules referenced in this section shall include petitions and applications filed in family support magistrate matters.

(1) General Provisions:

(A) Chapters 1, 2, 5 and 6, in their entirety;

(B) Chapter 3, in its entirety except subsection (b) of Section 3-2 and Section 3-9;

(C) Chapter 4, in its entirety except subsections (a) and (b) of Section 4-2;

(D) Chapter 7, Section 7-19.

(2) Procedures in Civil Matters:

(A) Chapter 8, Sections 8-1 and 8-2;

(B) Chapter 9, Sections 9-1 and 9-18 through 9-20;

(C) Chapter 10, Sections 10-1, 10-3 through 10-5, 10-7, 10-10, 10-12 through 10-14, 10-17, 10-26, 10-28, subsections (a) and (c) of Section 10-30, 10-31 through 10-34, subsection (b) of Section 10-39, 10-40, [10-41] 10-43 through 10-45 and 10-59 through 10-68;

(D) Chapter 11, Sections 11-1 through 11-8, 11-10 through 11-12 and 11-19;

(E) Chapter 12, in its entirety;

(F) Chapter 13, Sections 13-1 through 13-3, 13-5, 13-8, 13-10 except subsection (c), 13-11A, 13-21 except subdivision (13) of subsection (a), subsections (a), (e), (f), (g) and (h) of Sections 13-27, 13-28 and 13-30 through 13-32;

(G) Chapter 14, Sections 14-1 through 14-3, 14-9, 14-15, 14-17, 14-18, 14-24 and 14-25.

(H) Chapter 15, Sections 15-3, 15-5, 15-7 and 15-8;

(I) Chapter 17, Sections 17-1, 17-4, 17-5, 17-19, 17-21, subsection (a) of Sections 17-33 and 17-41;

(J) Chapter 18, Section 18-19;

(K) Chapter 19, Section 19-19;

(L) Chapter 20, Sections 20-1 and 20-3;

(M) Chapter 23, Sections 23-20, 23-67 and 23-68.

(3) Procedure in Family Matters:

Chapter 25, Sections 25-1, 25-9, 25-12 through 25-22, 25-27, 25-33, 25-48, 25-54, 25-59, 25-59A, 25-61, 25-62 through 25-64 and 25-68.

(b) Any pleading or motion filed in a family support magistrate matter shall indicate, in the lower right hand corner of the first page of the document, that it is a family support magistrate matter.

(c) Family support magistrate matters shall be placed on the family support magistrate matters list for hearing and determination.

(d) Family support magistrate list matters shall be assigned automatically by the clerk without the necessity of a written claim. No such matters shall be so assigned unless filed at least five days before the opening of court on the day the list is to be called.

(e) Family support magistrate list matters shall not be continued except by order of a judicial authority.

COMMENTARY: The above changes are made to be consistent with changes to Sections 4-2, 10-30 and 10-31, and the proposed repeal of Sections 10-41 and 10-42.

Sec. 25a-3. Withdrawal of Appearance; Duration of Appearance

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney or party in accordance with Section 3-8.

(b) An attorney may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subsection shall state that such an appearance has been entered and that such party or parties are being represented by such other counsel at the time of the application. Such an

application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

(c) In addition to the grounds set forth in subsections (a), (b), and (d), a lawyer who represents a party or parties on a limited basis in accordance with Section 3-8 (b) and has completed his or her representation as defined in the limited appearance, shall file a certificate of completion of limited appearance on Judicial Branch form JD-YY-YY. The certificate shall constitute a full withdrawal of a limited appearance. Copies of the certificate must be served in accordance with Sections 10-12 through 10-17 on the client, and all attorneys and self-represented parties of record.

[(c)] (d) All appearances of counsel shall be deemed to have been withdrawn 180 days after the entry of judgment in any action seeking a dissolution of marriage or civil union, annulment, or legal separation, provided no appeal shall have been taken. In the event of an appeal or the filing of a motion to open a judgment within such 180 days, all appearances of counsel shall be deemed to have been withdrawn after final judgment on such appeal or motion or within 180 days after the entry of the original judgment, whichever is later. Nothing herein shall preclude or prevent any attorney from filing a motion to withdraw with leave of the court during that period subsequent to the entry of judgment. In the absence of a specific withdrawal, counsel will continue of record for all postjudgment purposes until 180 days have elapsed from the entry of judgment or, in the event an appeal or a motion to open a judgment is filed within such 180 day period, until final

judgment on that appeal or determination of that motion, whichever is later.

[(d)] (e) Except as provided in subsections (a), (b), [and] (c), and (d) no attorney shall withdraw his or her appearance after it has been entered upon the record of the court without the leave of the court.

[(e)] (f) All appearances entered on behalf of parties for matters involving Title IV-D child support matters shall be deemed to be for those matters only.

[(f)] (g) All appearances entered on behalf of parties in the family division of the superior court shall not be deemed appearances for any matter involving a Title IV-D child support matter unless specifically so designated.

COMMENTARY: The revision to Section 3-9 which adds the certificate of completion provision to that section as new subsection (c) must be added to Section 25a-3 to allow lawyers to withdraw from a family support magistrates matter in which a limited appearance has been filed.

APPENDIX B (052013mins)

Sec. 2-53. Reinstatement after Suspension, Disbarment or Resignation

(a) [No application for reinstatement or readmission shall be considered by the court unless the applicant, among other things, states under oath in the application that he or she has successfully fulfilled all conditions imposed on him or her as a part of the applicant's discipline. However, if an applicant asserts that a certain condition is impossible to fulfill, he or she may apply, stating that assertion and the basis therefor. It is the applicant's burden to prove at the hearing on reinstatement or readmission the impossibility of the certain condition. Any application for reinstatement or readmission to the bar shall contain a statement by the applicant indicating whether such applicant has previously applied for reinstatement or readmission and if so, when. The application shall be referred, by the court to which it is brought, to the standing committee on recommendations for admission to the bar that has jurisdiction over the judicial district court location in which the applicant was suspended or disbarred or resigned, and notice of the pendency of such application shall be given to the state's attorney of that judicial district, the chair of the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned, and it shall also be published in the Connecticut Law Journal.] An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline expressly provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement pursuant to this section, unless otherwise ordered by the court at the time the discipline was imposed.

(b) [The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. It shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement or readmission, a transcript of its hearings thereon, any

exhibits received by the committee, any other documents considered by the committee in making its recommendations, and copies of all notices provided by the committee in accordance with this section.] An attorney who was disbarred or resigned shall be required to apply for reinstatement pursuant to this section, but shall not be eligible to do so until after five years from the effective date of disbarment or acceptance by the court of the resignation, unless the court that imposed the discipline expressly provided a shorter period of disbarment or resignation in its order. No attorney who has resigned from the bar and waived the privilege of applying for readmission or reinstatement to the bar at any future time shall be eligible to apply for readmission or reinstatement to the bar under this rule.

(c) [The court shall thereupon inform the chief justice of the supreme court of the pending application and report, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. Such three judges, or a majority of them, shall determine whether the application should be granted.] In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the effective date of the disbarment. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated, including but not limited to restitution to the client security fund for all claims paid resulting from the attorney's dishonest misconduct.

(d) [The standing committee shall notify the presiding judge, no later than fourteen days prior to the court hearing, if the committee will not be represented by counsel at the hearing and, upon such notification, the presiding judge may appoint, in his or her discretion, an attorney to review the issue of reinstatement and report his or her findings to the court. The attorney so appointed shall be compensated in accordance with a fee schedule approved by the executive committee of the superior court.] Unless otherwise ordered by the court, an application for reinstatement shall not be filed until:

(1) The applicant is in compliance with Sections 2-27(d), 2-70 and 2-80;

(2) The applicant is no longer the subject of any pending disciplinary proceedings or investigations;

(3) The applicant has passed the Multistate Professional Responsibility Examination not more than six months prior to the filing of the application;

(4) The applicant has successfully completed any criminal sentence including, but not limited to, a sentence of incarceration, probation, parole, supervised release, or period

of sex offender registration and has fully complied with any orders regarding conditions, restitution, criminal penalties or fines;

(5) The applicant has fully complied with all conditions imposed pursuant to the order of discipline. If an applicant asserts that a certain disciplinary condition is impossible to fulfill, he or she must apply to the court that ordered the condition for relief from that condition prior to filing an application for reinstatement;

(6) The bar examining committee has received an application fee. The fee shall be established by the chief court administrator and shall be expended in the manner provided by Section 2-22 of these rules.

(e) [The applicant shall pay to the bar examining committee \$200 and shall submit proof of such payment to the clerk of the superior court at the time the application is filed with the court. This sum shall be expended in the manner provided by Section 2-22 of these rules. If the petition for readmission or reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.] An application for reinstatement shall be filed with the clerk of the superior court in the jurisdiction that issued the discipline. The application shall be filed under oath and on a form approved by the office of the chief court administrator. The application shall be accompanied by proof of payment of the application fee to the bar examining committee.

(f) [An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline specifically provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement, unless otherwise ordered by the court at the time the discipline was imposed.] The application shall be referred by the clerk of the superior court where it is filed to the chief justice or designee, who shall refer the matter to a standing committee on recommendations for admission to the bar whose members do not maintain their primary office in the same judicial district as the applicant.

(g) [In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the date of the order disbaring the attorney. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated.] The clerk of the superior court shall give notice of

the pendency of the application to the state's attorney of that court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The clerk shall also promptly publish notice on the judicial branch website, in the Connecticut Law Journal, and in a newspaper with substantial distribution in the judicial district where the application was filed.

(h) Within sixty days of the referral from the chief justice to a standing committee, the statewide grievance committee and the office of the chief disciplinary counsel shall file a report with the standing committee, which report may include additional relevant information, commentary in the information provided in the application and recommendations on whether the applicant should be reinstated. Both the statewide grievance committee and the office of the chief disciplinary counsel may file an appearance and participate in any investigation into the application and at any hearing before the standing committee, and at any court proceeding thereon. All filings by the statewide grievance committee and the office of the chief disciplinary counsel and any other party shall be served and certified to all other parties pursuant to Section 10-12.

(i) The standing committee shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. The standing committee shall give written notice of all hearings to the applicant, the state's attorney of the court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district location where the application was filed, the statewide grievance committee, the office of the chief disciplinary counsel, the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The standing committee shall also publish all hearing notices on the judicial branch website, in the Connecticut Law Journal and in a newspaper with substantial distribution in the county where the application was filed.

(j) The standing committee shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its

recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement, any reports filed by the statewide grievance committee and office of the chief disciplinary counsel, a copy of the record of the applicant's disciplinary history, a transcript of its hearings thereon, any exhibits received by the standing committee, any other documents considered by the standing committee in making its recommendations, and copies of all notices provided by the standing committee in accordance with this section. Record materials containing personal identifying information or medical information may, in the discretion of the standing committee, be redacted, or open for inspection only to the applicant and other persons having a proper interest therein and upon order of the court. The standing committee shall complete work on the application within 180 days of referral from the chief justice. It is the applicant's burden to demonstrate by clear and convincing evidence that he or she possesses good moral character and fitness to practice law as defined by Section 2-5A.

(k) Upon completion of its investigation, the standing committee shall file its recommendation in writing together with a copy of the record with the clerk of the superior court. The report shall recommend that the application be granted, granted with conditions, or denied. The standing committee's report shall be served and certified to all other parties pursuant to Section 10-12.

(l) The court shall thereupon inform the chief justice of the pending application and recommendation, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. The applicant, the statewide grievance committee, the office of the chief disciplinary counsel and the standing committee shall have an opportunity to appear and be heard at any hearing. The three judge panel, or a majority of them, shall determine whether the application should be granted.

(m) If the application for reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. Unless otherwise ordered by the court, the attorney may not reapply for reinstatement for a period of at least one year following the denial.

COMMENTARY: These proposed rule changes establishes a consistent application and process for suspended, disbarred, or resigned attorneys who wish to apply for reinstatement. The process will place the burden on the applicant to prepare a thorough, uniform application for reinstatement before it is submitted to the standing committee and the court for and investigation.

Subsection (a) moves the language in the current subsection (f) to subsection (a).

Subsection (b) places a minimum waiting time of five years on those attorneys who have been disbarred or resigned when the court did not provide a specific time frame for the discipline.

Subsection (c) moves the language from current subsection (g) to subsection (c). It also makes clear that an attorney who has resigned and waived the right to apply for reinstatement cannot use this rule to apply for reinstatement.

Subsection (d) creates a uniform application process for attorneys applying for reinstatement. The process also prohibits attorneys who are not in compliance with Sections 2-27(d), 2-70 or 2-80 from applying for reinstatement. Currently attorneys who 1) have not registered when suspended, have failed to pay the Client Security Fund fee, and have failed to make full restitution to the Client Security Fund, 2) are under a pending disciplinary investigation, or 3) have not completed all of the conditions of a criminal sentence can still apply for reinstatement to the Connecticut Bar. This would end that practice. It would also require applicants to take and pass the MPRE and requires them to open their disciplinary case to have a condition removed, if it is impossible to complete. A uniform application also places the burden on the applicant to disclose credit problems, criminal history, mental health and substance abuse problems, employment history, prior residences, references and rehabilitation efforts (including CLE and community service) in advance of a hearing before the standing committee. Currently, the burden was on the standing committee to affirmatively ask for this information, if the applicant had not provided it. The standing committee as a volunteer committee, has limited resources to independently investigate an application. This would place the burden back on the applicant to have a continuing duty to disclose this information.

This proposed application process is similar to the reinstatement process in New York as well as the current investigation the Connecticut Bar Examining Committee performs for new applicants to the Connecticut bar.

Subsection (e) describes where the application would be filed. It also changes the application fee from \$200 to an amount set by the Chief Court Administrator.

Subsection (f) contains language from current subsection (a). It also prevents a standing committee with attorneys who work in the judicial district where the applicant worked as an attorney from investigating the application.

Subsection (g) contains language from previous subsection (a). It also requires the clerk to publish notice on the website and in a newspaper so that the general public might become aware of a reinstatement application.

Subsection (h) clarifies the role of the statewide grievance committee and the disciplinary counsel in helping to investigate the application and allows them to provide a report to the standing committee and participate in all of the proceedings.

Subsection (i) contains language from current subsection (b). It also requires the standing committee to send notice to interested parties and publish notice of its hearings in a manner similar to the clerk of the court's initial publication and notice requirements.

Subsection (j) contains language from current subsection (b). It also provides the standing committee with a timeframe of 180 days to complete its work. It codifies that the burden of proof is on the applicant to prove fitness to practice law and good and moral character.

Subsection (k) contains language from current subsection (b). It also clarifies that the standing committee shall make a recommendation that the application be granted, granted with conditions, or denied.

Subsection (l) contains language from current subsection (c). It also clarifies who may appear at the hearing.

Subsection (m) contains language from current subsection (e). It changes the timeframe to submit a new application for reinstatement from six months to one year if the prior application has been denied.

APPENDIX C (052013mins)

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

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

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

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

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

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

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

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

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

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

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

(3) Appeals from the commissioner of revenue services.

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

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

(c) Appeals in which the parties are entitled to a trial de novo, including but not limited to (1) Appeals from municipal boards of tax review or boards of assessment appeals taken pursuant to General Statutes §§ 12-117a and 12-119; (2) Appeals from municipal assessors taken pursuant to General Statutes § 12-103; (3) Appeals from the commissioner of revenue services; and (4) Appeals from the insurance commissioner taken pursuant to General Statutes § 38a-139; are excluded from the procedures prescribed in Section 14-7A and 14-7B below, and shall, subsequent to the filing of the appeal, follow the same course of pleading as that followed in ordinary civil actions.

[(e)](d) Administrative appeals are not subject to the pretrial rules, except as otherwise provided in Sections 14-7A and 14-7B.

COMMENTARY: The intent of the revisions to Sections 8-1, 14-6, 14-7, 14-7A and 14-7B is to streamline and clarify the process of filing administrative appeals and to reduce the size of the record that is filed with the court.

APPENDIX D (052013mins)

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

(a) The plaintiff shall file a motion for default for failure to appear[,] and judgment [and, if applicable, an order for weekly payments. The motion shall have attached to it an affidavit of debt, a military affidavit], a bill of costs [and], a proposed judgment and notice to all parties, and if applicable, a request for an order of weekly payments pursuant to Section 17-26.

(b) The motion shall have attached to it the following affidavits:

(1) An affidavit of debt signed by the plaintiff or by an authorized representative of the plaintiff who is not the plaintiff's attorney. The affidavit shall state the amount due or the principal owed and contain an itemization of interest, attorney's fees and other lawful charges claimed. The affidavit shall contain a statement that any documents attached to it are true copies of the originals. Any plaintiff claiming interest shall separately state the interest and shall specify the dates from which and to which interest is computed, the rate of interest, the manner in which it was calculated and the authority upon which the claim for interest is based.

[(b)](A) If the instrument on which the contract is based is a negotiable instrument or assigned contract, the affidavit shall state that the instrument or contract is now owned by the plaintiff, and a copy of the executed instrument or contract shall be attached to the affidavit. [If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which the interest is computed, which shall not be later than the date of the entry of judgment.] If the plaintiff is not the original party with whom the instrument or contract was made, the plaintiff shall either (1) attach all bills of sale back to the original creditor and swear to its purchase of the debt from the last owner in its affidavit of debt or (2) in the affidavit of debt, recite the names of all prior owners of the debt with the date of each prior sale, and also include the most recent bill of sale from the plaintiff's seller and swear to its purchase of the debt from its seller in the affidavit of debt.

[(c)](B) If the [moving party] plaintiff claims any lawful fees or charges other than interest, including a reasonable attorney's fee, the plaintiff shall attach to the affidavit of debt [shall set forth] a copy of the portion of the contract containing the terms of the contract providing for such fees or charges and the amount claimed.

(C) If a claim for a reasonable attorney's fee is made, the [moving party] plaintiff shall include in the affidavit of debt the reasons for the specific amount requested in order that the judicial authority may determine the relationship between the fee requested and the actual and reasonable costs which are incurred by counsel [and a copy of the contract shall be attached to the affidavit].

(2) A military affidavit as required by Section 17-21.

(c) Nothing contained in this section shall prevent the judicial authority from requiring the submission of additional written documentation or the presence of the plaintiff, the authorized representative of the plaintiff or other affiants, as well as counsel, before the court prior to rendering judgment if it appears to the judicial authority that additional information or evidence is required in order to enter judgment.

COMMENTARY: The amendment conforms the requirements to obtain a default judgment in actions based on an express or implied promise to pay a definite sum and claiming liquidated damages only, Practice Book section 17-34 and 17-24, to the ones already in place to obtain such judgments in small claims court, Practice Book Section 24-24. The amendment will make the practice consistent and clarify the requisite affidavits and attachments necessary to obtain judgment.

For the purposes of subsection (b) (1), in regard to credit card debts owed to a financial institution and subject to federal requirements for the charging off of accounts, it is the intention of this rule that the federally authorized charge-off balance may be treated as the "principal" and itemization regarding such debts is required only from the date of the charge-off balance.

APPENDIX E (052013mins)

Sec. 3-9. Withdrawal of Appearance; Duration of Appearance

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney or party in accordance with Section 3-8. An attorney or party whose appearance is deemed to have been withdrawn may file an appearance for the limited purpose of filing an objection to the in lieu of appearance.

(b) An attorney may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subsection shall state that such an appearance has been entered and that such party or parties are being represented by such other counsel at the time of the application. Such an application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

(c) In addition to the grounds set forth in subsections (a), (b), and (d), a lawyer who represents a party or parties on a limited basis in accordance with Section 3-8 (b) and has completed his or her representation as defined in the limited appearance, shall file a certificate of completion of limited appearance on Judicial Branch form JD-YY-YY. The certificate shall constitute a full withdrawal of a limited appearance. Copies of the certificate must be served in accordance with Sections 10-12 through 10-17 on the client, and all attorneys and self-represented parties of record.

[(c)](d) All appearances of counsel shall be deemed to have been withdrawn 180 days after the entry of judgment in any action seeking a dissolution of marriage or civil union, annulment, or legal separation, provided no appeal shall have been taken. In the event of an appeal or the filing of a motion to open a judgment within such 180 days, all appearances of counsel shall be deemed to have been withdrawn after final judgment on such appeal or motion or within 180 days after the entry of the original judgment, whichever is later. Nothing herein shall preclude or prevent any attorney from filing a motion to withdraw with leave of the court during that period subsequent to the entry of judgment. In the absence of a specific withdrawal, counsel will continue of record for all

postjudgment purposes until 180 days have elapsed from the entry of judgment or, in the event an appeal or a motion to open a judgment is filed within such 180 day period, until final judgment on that appeal or determination of that motion, whichever is later.

~~[(d)]~~(e) Except as provided in subsections (a), (b), ~~[and] (c)[,]~~ and (d), no attorney shall withdraw his or her appearance after it has been entered upon the record of the court without the leave of the court.

~~[(e)]~~(f) All appearances in juvenile matters shall be deemed to continue during the period of delinquency probation, family with service needs supervision, or any commitment to the commissioner of the department of children and families or protective supervision. An attorney appointed by the chief public defender to represent a parent in a pending neglect or uncared for proceeding shall continue to represent the parent for any subsequent petition to terminate parental rights if the attorney remains under contract to the office of the chief public defender to represent parties in child protection matters, the parent appears at the first hearing on the termination petition and qualifies for appointed counsel, unless the attorney files a motion to withdraw pursuant to Section 3-10 that is granted by the judicial authority or the parent requests a new attorney. The attorney shall represent the client in connection with appeals, subject to Section 35a-20, and with motions for review of permanency plans, revocations or postjudgment motions and shall have access to any documents filed in court. The attorney for the child shall continue to represent the child in all proceedings relating to the child, including termination of parental rights and during the period until final adoption following termination of parental rights.

COMMENTARY: The above change to subsection (c) is made in connection with the revision to Section 3-8 (b) that allows an attorney to file a limited appearance pursuant to a pilot program that may be established by the Chief Court Administrator.

The above change to subsection (e) is made in light of the change to Section 3-8 (b).

The above change to subsection (f) clarifies the ongoing obligation of an attorney to represent a parent in certain proceedings provided the attorney still has a contract with the chief public defender to provide such representation.

APPENDIX F (052013mins)

Sec. 10-31. [—Grounds of Motion to Dismiss]: —Opposition; Date for Hearing Motion to Dismiss

[(a) The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law, and where appropriate, with supporting affidavits as to facts not apparent on the record.

(b) Any adverse party who objects to this motion shall, at least five days before the motion is to be considered on the short calendar, file and serve in accordance with Sections 10-12 through 10-17 a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record.]

(a) Any adverse party shall have thirty days from the filing of the motion to dismiss to respond to the motion to dismiss by filing and serving in accordance with Sections 10-12 through 10-17 a memorandum of law in opposition and, where appropriate, supporting affidavits as to facts not apparent on the record.

(b) Except in summary process matters, the motion shall be placed on the short calendar to be held not less than forty-five days following the filing of the motion, unless the judicial authority otherwise orders. If an evidentiary hearing is required, any party shall file a request for such hearing with the court.

COMMENTARY: The revised rule now includes all requirements for responding to a motion to dismiss, and specifically allows thirty days for the filing of a response to allow additional time for counsel and self-represented parties to review and respond to a motion to dismiss. By extending and clarifying the time for parties to respond, the drafters expect that parties will not find it necessary to seek an extension of time to plead as frequently. The rule, therefore, no longer contains the provision for filing a request for extension of time although that would not preclude parties from moving for an extension when necessary.

Sec. 10-40. —Opposition; Date for Hearing Motion to Strike [Request for Extension of Time to Respond]

[Except in summary process matters, the motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of

the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant the request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request.]

(a) Any adverse party shall have thirty days from the filing of the motion to strike to respond to a motion to strike filed pursuant to Sec. 10-39 by filing and serving in accordance with Sections 10-12 through 10-17 a memorandum of law in opposition.

(b) Except in summary process matters, the motion to strike shall be placed on the short calendar to be held not less than forty-five days following the filing of the motion, unless the judicial authority otherwise orders.

COMMENTARY: The rule has been revised to include all requirements for filing a response to a motion to strike, including the time for filing the memorandum of law and the information on when the motion can be placed on the short calendar. The revised rule also provides additional time for counsel and self-represented parties to review and respond to a motion to strike. By extending the time for parties to respond, the drafters expect that parties will not find it necessary to seek an extension of time to file a response as frequently. The revision has also eliminated provision for filing a request for extension of time although that would not preclude parties from moving for an extension when necessary.

APPENDIX G (052013mins)

Sec. 10-8. Time to Plead

Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall [first] advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of [fifteen] thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the [initial] time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that there is good cause to suspend such time requirements.

COMMENTARY: The amount of time permitted for the filing of pleadings in civil actions has been extended from fifteen days to thirty days to allow additional time for counsel and self-represented parties to review and respond to filings. By extending the time for parties to respond to new pleadings from fifteen to thirty days, it is expected that parties will not find it necessary to frequently seek an extension of time to plead. This change in the rule has no effect on summary process and foreclosure cases.

APPENDIX H (052013mins)

Rule 1.0. Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Client" or "person" as used in these Rules includes an authorized representative unless otherwise stated.

(c) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See subsection (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(i) "Reasonable" or "reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(j) "Reasonable belief" or "reasonably believes," when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know," when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(l) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(m) "Substantial," when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative

capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and [e-mail] electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENTARY: Confirmed in Writing. If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm. Whether two or more lawyers constitute a firm within paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal

agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud. When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such

under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent. Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2 (c), 1.6 (a) and 1.7 (b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not

personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7 (b) and 1.9 (a). For a definition of "writing" and "confirmed in writing," see subsections (o) and (c). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8 (a) and (g). For a definition of "signed," see subsection (o).

Screened. The definition of "screened" applies to situations where screening of a personally disqualified lawyer

is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer shall acknowledge in writing to the client the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other [materials] information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other [materials] information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm

knows or reasonably should know that there is a need for screening.

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless:

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9 (a) or 1.9 (b) and arises out of the disqualified lawyer's association with a prior firm, and

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

(B) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(C) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9 (c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

COMMENTARY: Definition of "Firm." For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See

Rule 1.0 (d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0 and its Commentary.

Principles of Imputed Disqualification. The rule of imputed disqualification stated in subsection (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Subsection (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9 (b) and 1.10 (b).

The Rule in subsection (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The Rule in subsection (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does subsection (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0 (k) and 5.3.

Rule 1.10 (b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9 (c).

Rule 1.10 (c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7

require the lawyer to determine that the representation is not prohibited by Rule 1.7 (b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7 and its Commentary. For a definition of informed consent, see Rule 1.0 (f).

Rule 1.10 (a) (2) similarly removes the imputation otherwise required by Rule 1.10 (a), but unlike section (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures laid out in sections (a) (2) (A)-(C) be followed. A description of effective screening mechanisms appears in Rule 1.0 (f) and Official Commentary thereto. Lawyers should be aware, however, that, even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

Paragraph (a) (2) (A) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

The notice required by paragraph (a) (2) (B) generally should include a description of the screened lawyer's prior representation and be given as soon as practicable after the need for screening becomes apparent. It also should include a

statement by the screened lawyer and the firm that the client's material confidential information has not been disclosed or used in violation of the Rules. The notice is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

The certifications required by paragraph (a) (2) (C) give the former client assurance that the client's material confidential information has not been disclosed or used inappropriately, either prior to timely implementation of a screen or thereafter. If compliance cannot be certified, the certificate must describe the failure to comply.

Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11 (d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, subsection (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

AMENDMENT NOTE: The above change is taken from paragraphs 7 through 10 of the commentary to Rule 1.10 of the ABA Model Rules of Professional Conduct.