Minutes of the Meeting
Rules Committee
May 31, 2011

On Tuesday, May 31, 2011, at 10:00 a.m. the Rules Committee conducted a public hearing in the Supreme Court Hearing Room to receive comments concerning proposed revisions to the Practice Book. At the conclusion of the public hearing the Committee met in the Attorneys' Conference Room from 11:13 a.m. to 12:43 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. BARBARA N. BELLIS
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
HON. LESLIE I. OLEAR
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

The Honorable Juliett L. Crawford was not in attendance at this meeting.

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

Agenda

1. The Committee unanimously approved the minutes of the March 21, 2011, meeting.

2. The Committee considered a proposal from Judge Robert Holzberg to amend Rule 2.2 (4) of the Code of Judicial Conduct by replacing the term "pro se" with "self represented."

After discussion, the Committee asked the undersigned to change the references to "pro se" in the Practice Book to "self represented," where appropriate, and to submit the draft to the Committee for consideration in the fall.

3. The Committee considered a letter from Justice Christine S. Vertefeuille requesting feedback from the Rules Committee concerning a proposal by the Appellate Advocacy Committee of the CBA to amend Section 61-10 of the appellate rules concerning articulations for purpose of appeal.

After discussion, the Committee tabled the matter for consideration in the fall.

4. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler on behalf of the Statewide Grievance Committee to further amend the proposed revision to Rule 1.15 (j) (3) of the Rules of Professional Conduct.

After discussion, the Committee unanimously voted to further revise the proposed revision to Rule 1.15(j) (3) as set forth in Appendix A attached hereto.

5. The Committee considered comments from Judge Heidi G. Winslow concerning the proposed revisions to the family rules and a response from Judge Lynda Munro, Chief Administrative Judge for Juvenile Matters, with regard to Judge Winslow's comments.

After discussion, the Committee took the following action: tabled consideration of Judge Winslow's further amendment to the proposed revision to Section 11-1 (a); voted, with Judge Taylor opposed, to make no further amendments to the proposed revision to Section 25-5 (b) and to proposed new Section 25-5A (b); unanimously voted to make no further changes to the proposed revision to Section 25-62; and unanimously voted to amend proposed new Sections 25-2A and 25-32A as set forth in Appendix B attached hereto.

(Judge Bellis temporarily left the meeting during the discussion and vote on this matter. The above paragraph reflects the actions taken by the members present at the meeting during her absence.)

6. The Committee considered proposals by Attorney Daniel B. Horwitch to further amend the proposed revisions to Sections 25-5 and 25-5A concerning automatic orders in family matters.

In connection with Attorney Horwitch's proposal that, instead of using uppercase letters to provide emphasis in the text of a rule as is done in Section 25-5 (c) (2), it would be preferable to show such language as bold with underlines, the Committee asked the undersigned to bring to the Committee's attention in the fall any other rules that utilize uppercase letters as a means of emphasis so that the Committee may determine whether to change the format to underlined bold language.

Attorney Horwitch notes that studies have shown that text printed in all uppercase letters is more difficult to read and, therefore, the message being conveyed is less likely to be absorbed.

7. The Committee considered a request by Judge Lynda Munro that the proposed revisions to Sections 25-31, 25-34 and 25-60 and proposed new Sections 25-32A, 25-32B and

25-60A be made effective as soon as possible if they are adopted by the judges of the Superior Court.

After discussion, the Committee unanimously voted to propose to the judges at the Annual Meeting that, if adopted, these changes become effective on August 15, 2011.

8. The Committee considered a letter from Judge Samuel J. Sferrazza suggesting a further amendment to the proposed revision to Section 13-19 concerning disclosures of defense.

After discussion, the Committee unanimously voted to further amend the proposed revision to Section 13-19 as set forth in Appendix C attached hereto.

9. The Committee considered an e-mail from Judge Christine Keller, Chief Administrative Judge for Family Matters, in which she notes that the Commission on Child Protection and the Office of Chief Child Protection Attorney will be eliminated in the budget bill and that the functions of those entities will be delegated to the Division of Public Defender Services. She suggests therefore that the family rules be amended to reflect these changes.

After discussion, the Committee tabled this matter to the fall.

10. The Committee considered comments by Mr. Francis Knize concerning various proposed revisions to the rules and unanimously voted to take no action concerning the proposals since they do not come under the Rules Committee's purview.

11. The Committee considered materials from Mr. Michael Nowacki concerning various proposed revisions to the rules and unanimously voted to take no action concerning the proposals since they do not come under the Rules Committee's purview.

12. The Committee considered proposals by Attorney Eric Levine of the Office of the Reporter of Judicial Decisions to further amend the proposed revisions to Section 4-5 of the Code of Evidence.

After discussion, the Committee took the following action.

The Committee voted, with Judge Prescott abstaining and Judges O'Lear and Keegan opposed, to further amend the proposed revisions to Section 4-5 (a) and certain citations in the commentary to Section 4-5 (b) as set forth in Appendix D attached hereto.

The Committee voted, with Judges Prescott and Sheldon abstaining and Judges Keegan and O'Lear opposed, to further amend the proposed revisions to the first sentence of the commentary to Section 4-5 (b) as set forth in Appendix D.

The Committee voted, with Judge Prescott abstaining and Judges Keegan and O'Lear opposed, to deny a proposal concerning the phrases "aberrant and compulsive criminal sexual behavior," and "aberrant and compulsive sexual misconduct" in Section 4-5 (b).

The Committee denied, with Judge Prescott abstaining, a proposal to delete Section 4-5 (b) (3).

The Committee unanimously voted to take no action with regard to a proposal to further amend the second sentence of the Section 4-5 (b) commentary.

13. Judge Gold and Judge Clifford joined the meeting to discuss with the Rules Committee proposed further amendments to the proposed rules regarding media coverage of arraignments.

After discussion, the Committee voted, with Judge Taylor opposed, to further amend the proposed revisions to Section 1-11A as set forth in Appendix E attached hereto.

14. The Committee noted that punctuation changes were needed in proposed new subsections (a) and (b) of Section 11-1.

The Committee thereupon unanimously voted to amend proposed new subsections (a) and (b) of Section 11-1 as set forth in Appendix F.

Respectfully submitted,

Carl E. Testo

Carl E. Testo
Counsel to the Rules Committee

Attachments

APPENDIX A (05-31-11 mins)

Rule 1.15. Safekeeping Property

(a) As used in this Rule, the terms below shall have the following meanings:

(1) ''Allowable reasonable fees'' for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee.

(2) An ''eligible institution'' means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the United States government, or (ii) an openend investment company registered with the United States Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in subsection (h) (3) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (h) (4) below, subject to the dispute resolution process provided in subsection (h) (4) (E) below.

(3) ''Federal Funds Target Rate'' means the target level for the federal funds rate set by the Federal Open Market Committee of the Board of Governors of the Federal Reserve System from time to time or, if such rate is no longer available, any comparable successor rate. If such rate or successor rate is set as a range, the term ''Federal Funds Target Rate'' means the upper limit of such range.

(4) ''Interest- or dividend-bearing account'' means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is ''well-capitalized'' or ''adequately capitalized'' as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a ''money market fund'' as that term is defined by federal statutes and regulations

under the Investment Company Act of 1940 and, at the time of the investment, must have total assets of at least $250,000,000.

(5) ''IOLTA account'' means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection (h) (6) below. The determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (h) (4) below.

(6) ''Non-IOLTA account'' means an interestor dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(7) ''U.S. Government Securities'' means direct obligations of the United States government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States government-sponsored enterprises, as such term is defined by applicable federal statutes and regulations.

(b) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank service charges on that account or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for those purposes.

(d) Absent a written agreement with the client otherwise, a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(g) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income. No

lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

(h) An IOLTA account may only be established at an eligible institution that meets the following requirements:

(1) No earnings from the IOLTA account shall be made available to a lawyer or law firm.

(2) Lawyers or law firms depositing a client's or third person's funds in an IOLTA account shall direct the depository institution:

(A) To remit interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practices, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;

(B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is made and such other information as is reasonably required by such organization; and

(C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution's normal procedures for reporting to its depositors.

(3) Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its

non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

(B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.

(C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(4) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the

United States, as from time to time amended, to administer the program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

(A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the superior court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

(C) Allow the judicial branch access to its books and records upon reasonable notice;

(D) Submit to audits by the judicial branch; and

(E) Provide for a dispute resolution process for resolving disputes as to whether a bank, savings and loan association, or open-end investment company is an eligible institution within the meaning of this Rule.

(5) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have

approved, a resolution of the board of directors of such an organization which includes provisions:

(A) Establishing that all funds the organization might receive pursuant to subsection (h) (2) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;

(B) Establishing that all interest and dividends earned on such funds, less allowable reasonable fees, if any, shall be used exclusively for such purposes;

(C) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;

(D) Establishing that the organization shall consult with and receive recommendations from the Advisory Panel established by General Statutes § 51-81c regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;

(E) Establishing that the organization shall comply with the requirements of this Rule; and

(F) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by the judges of the superior court and ninety days have elapsed after publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.

(6) Nothing in this subsection (h) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

(A) A separate clients' funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or

(B) A pooled clients' funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client's or third person's funds and the payment thereof to the client or third person.

(i) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this Rule and shall retain the following records for a period of seven years after termination of the representation:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct;

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) copies of bills for legal fees and expenses rendered to clients;

(6) copies of records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(9) copies of monthly trial balances and at least quarterly reconciliations of the client trust accounts maintained by the lawyer; and

(10) copies of those portions of client files that are reasonably related to client trust account transactions.

(j) With respect to client trust accounts required by this Rule:

(1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;

(2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(3) withdrawals shall be made only by check payable to a named payee or by authorized electronic transfer and not to cash.

(k) The records required by this Rule may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

(l) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.

(m) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

COMMENTARY: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. Separate trust accounts may be warranted when administering estate moneys or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices [and comply with the requirements of Practice Book Section 2-27].

While normally it is impermissible to commingle the lawyer's own funds with client funds, subsection (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients' funds account funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Subsection (f) also recognizes that third parties, such as a client's creditor who has a lien on funds recovered in a personal injury action, may have lawful claims against specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

The word ''interests'' as used in subsection (f) includes, but is not limited to, the following: a valid judgment concerning disposition of the property; a valid statutory or judgment lien, or other lien recognized by law, against the property; a letter of protection or similar obligation that is both (a) directly related to the property held by the lawyer, and (b) an obligation specifically entered into to aid the lawyer in obtaining the property; or a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule. A ''lawyers' fund'' for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

Subsection (h) requires lawyers and law firms to participate in the statutory IOLTA program. The lawyer or law firm should review its IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

Subsection (i) lists the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the Rules of Professional Conduct.

Subsection (i) requires that lawyers maintain client trust account records, including the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks for a period of at least seven years after termination of each particular legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. § 5001 *et. seq.*, recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. § 5002(16) as "paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. § 5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number years.

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments,

and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection (i)(8).

There are five types of check conversions where a lawyer should be careful to comply with the requirements of subsection (i)(8). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in a "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Subsection (i)(8) applies to each of the type of electronic funds transfers described. All electronic funds transfers shall be recorded and a lawyer should not re-use a check number which has been previously used in an electronic transfer transaction.

The potential of these records to serve as safeguards is realized only if the procedures set forth in subsection (i) (9) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

In some situations, documentation in addition to that listed in paragraphs (1) through (9) of subsection (h) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under paragraph (10) of subsection (h) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this paragraph include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

Subsection (j) lists minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in this jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorized to make electronic transfers from a client trust account. While it is permissible to grant limited non-lawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See, Rules 5.1 and 5.3 of the Rules of Professional Conduct.

Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

The requirements in paragraph (2) of subsection (j) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

Subsection (k) allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by subsection (i) shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Rule 1.15 of the Rules of Professional Conduct, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule.

Subsections (*l*) and (m) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules 1.0 (d), (h), and (i) of the Rules of Professional Conduct.

AMENDMENT NOTES: The above revisions are based on the ABA Model Rules for Client Trust Account Records.

APPENDIX B (05-31-11 mins)

(NEW) Sec. 25-2A. Premarital and Postnuptial Agreements

(a) If a party seeks enforcement of a premarital agreement or postnuptial agreement, he or she shall specifically demand the enforcement of that agreement, including its date, within the party's claim for relief. The defendant shall file said claim for relief within sixty days of the return date unless otherwise permitted by the court.

(b) If a party seeks to avoid the premarital agreement or postnuptial agreement claimed by the other party, he or she shall, within sixty days of the claim seeking enforcement of the agreement, unless otherwise permitted by the court, file a reply specifically demanding avoidance of the agreement and stating the grounds thereof.

COMMENTARY: The proposed rule requires that a party seeking to enforce or to avoid enforcement of a premarital agreement or postnuptial agreement give notice of that intention by filing appropriate claims for relief before the case management date.

(NEW) Sec. 25-32A. Discovery Noncompliance

If a party fails to comply with a discovery request or a discovery order in any manner set forth in Sec. 13-14(a), the party who requested such discovery or in whose favor the discovery order was made may move to compel compliance with the request or order. The moving party shall specify in a memorandum in support of his or her motion, the discovery sought and the remedy sought. The party to whom the discovery request or order was directed shall, in a memorandum, specify why the discovery has not been provided or why such party has not complied with the discovery order. If the party to whom the discovery request or order was directed claims that the discovery has been provided or order has been complied with, he or she shall detail with specificity what discovery was provided and how compliance with the discovery order was made.

COMMENTARY: The purpose of this proposed new rule is to clarify and improve the discovery process in Family Cases. It is not the intent of this rule to have the actual disclosure documents provided, but rather a detailed list of the items provided.

APPENDIX C (05-31-11 mins)

Sec. 13-19. Disclosure of Defense

In any action to foreclose or to discharge any mortgage or lien or to quiet title, or in any action upon any written contract, in which there is an appearance by an attorney for any defendant, the plaintiff may at any time file and serve in accordance with Sections 10-12 through 10-17 a written demand that such attorney present to the court, to become a part of the file in such case, a writing signed by the attorney stating whether he or she has reason to believe and does believe that there exists a bona fide defense to the plaintiff's action and whether such defense will be made, together with a general statement of the nature or substance of such defense. If the defendant fails to disclose a defense [within five days of the filing of such demand, or] within ten days of the filing of such demand in any action to foreclose a mortgage or lien or to quiet title, or in any action upon any written contract, the plaintiff may file a written motion that a default be entered against the defendant by reason of the failure of the defendant to disclose a defense. If no disclosure of defense has been filed, the judicial authority may order judgment upon default to be entered for the plaintiff at the time the motion is heard or thereafter, provided that in either event a separate motion for such judgment has been filed. The motions for default and for judgment upon default may be served and filed simultaneously but shall be separate motions.

COMMENTARY: The above change provides that the time to disclose a defense shall be ten days from the filing of the demand in all actions within the purview of the rule.

APPENDIX D (05-31-11 mins)

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

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

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

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

[(c)](d) Specific instances of conduct when character in issue. In cases in which character or a trait of character of a person in relation to a charge, claim or defense is in issue, proof shall be made by evidence of specific instances of the person's conduct.

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

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

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

Subsection (a) specifically prohibits the use of other crimes, wrongs or acts evidence to prove a person's propensity to engage in the misconduct with which he has been charged. However, the court may admit evidence of a defendant's uncharged sexual misconduct to prove that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual behavior; *State v. DeJesus,* 288 Conn. 418 (2008); *State v. Snelgrove,* 288 Conn. 742 (2008); *State v. Johnson,* 289 Conn. 437 (2008). Although *State v. DeJesus* involved a sexual assault charge, later, the Supreme Court, in *State v. Snelgrove,* made it clear that the DeJesus propensity rule is not limited to cases in which the defendant is charged with a sex offense. In *State v. Snelgrove,* the court stated: "We conclude that this rationale for the exception to the rule barring propensity evidence applies whenever the evidence establishes that both the prior misconduct and the offense with which the defendant is charged were driven by an aberrant sexual compulsion, regardless of whether the prior misconduct or the conduct at issue resulted in sexual offense charges." *State v. Snelgrove, supra,* 760. The admission of the evidence of a

defendant's uncharged sexual misconduct to prove that the defendant had a tendency or a propensity to engage in aberrant and compulsive sexual behavior should be accompanied by an appropriate cautionary instruction limiting the purpose for which it may properly be used. *State v. DeJesus, supra,* 474.

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

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

(1) intent; e.g., *State* v. *Lizzi*, 199 Conn. 462, 468–69, 508 A.2d 16 (1986);

(2) identity; e.g., *State* v. *Pollitt*, 205 Conn. 61, 69, 530 A.2d 155 (1987);

(3) malice; e.g., *State* v. *Barlow*, 177 Conn. 391, 393, 418 A.2d 46 (1979);

(4) motive; e.g., *State* v. *James*, 211 Conn. 555, 578, 560 A.2d 426 (1989);

(5) a common plan or scheme; e.g., *State* v. *Morowitz*, 200 Conn. 440, 442–44, 512 A.2d 175 (1986);

(6) absence of mistake or accident; e.g., *State* v. *Tucker*, 181 Conn. 406, 415–16, 435 A.2d 986 (1980);

(7) knowledge; e.g., *State* v. *Fredericks*, 149 Conn. 121, 124, 176 A.2d 581 (1961);

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

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

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

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

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

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

APPENDIX E (05-31-11 mins)

Sec. 1-11A. Media Coverage of Arraignments

(a) The broadcasting, televising, recording, or taking photographs by media in the courtroom during arraignments may be authorized by the judicial authority presiding over such arraignments in the manner set forth in this section, as implemented by the judicial authority. [The judicial authority shall articulate the reasons for its decision on a request for electronic coverage of an arraignment and such decision shall be final. The judicial authority in its discretion may require pooling arrangements by the media.]

(b) Any media representative desiring to broadcast, televise, record or photograph an arraignment shall send an e-mail request for electronic coverage to a person designated by the chief court administrator. Said designee shall promptly transmit any such request to the administrative judge, presiding judge of criminal matters, arraignment judge, clerk and the supervising marshal. The administrative judge shall ensure that notice is provided to the state's attorney and the attorney for the defendant or, where the defendant is unrepresented, to the defendant. Electronic coverage shall not be permitted until the state's attorney and the attorney for the defendant, or the defendant if he or she has no attorney, have had an opportunity to object to the request on the record and the judicial authority has ruled on the objection. If a request for coverage is denied or is granted over the objection of any party, the judicial authority shall articulate orally or in writing the reasons for its decision on the request and such decision shall be final.

(c) Broadcasting, televising, recording or photographing of the following are prohibited:

(1) any criminal defendant who has not been made subject to an order for electronic coverage and, to the extent practicable, any person other than court personnel or other participants in the arraignment for which electronic coverage is permitted;

(2) conferences involving the attorneys and the judicial authority at the bench or communications between the defendant and his or her attorney or other legal representative;

(3) close ups of documents of counsel, the clerk or the judicial authority;

(4) the defendant while exiting or entering the lockup;

(5) to the extent practicable, any restraints on the defendant;

(6) to the extent practicable, any judicial marshals or department of correction employees escorting the defendant while he or she is in the courtroom; and

(7) proceedings in cases transferred from juvenile court prior to a determination by the adult court that the matter was properly transferred.

(d) Only one (1) still camera, one (1) television camera and one (1) audio recording device which do not produce a distracting sound or light shall be employed to cover the arraignment, unless otherwise ordered by the judicial authority.

(e) The operator of any camera, television or audio recording equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom.

(f) All personnel and equipment shall be situated in an unobtrusive manner within the courtroom. The location of any such equipment and personnel shall be determined by the judicial authority. The location of the camera, to the extent possible, shall provide access to optimum coverage. Once the judicial authority designates the position for a camera, the operator of the camera must remain in that position and not move about until the arraignment is completed.

(g) Videographers, photographers and equipment operators must conduct themselves in the courtroom quietly and discreetly, with due regard for the dignity of the courtroom.

(h) If there are multiple requests to broadcast, televise, record or photograph the same arraignment, the media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the judicial authority.

(i) On-camera reporting and interviews shall only be conducted outside of the courthouse.

COMMENTARY: The revisions to this section delineate the specific procedures that must be followed and implemented in connection with the authorization by the judicial authority of media coverage of arraignments. Any media representative desiring to cover such arraignments must send an e-mail request for electronic coverage to a person designated by the chief court administrator. Electronic coverage shall not be permitted until the parties have had an opportunity to object to the request and the judicial authority has ruled on the objection. The decision on the objection is final. The persons and events that are prohibited from being broadcast, televised, recorded or photographed are specifically

delineated in the rule as revised. The number and types of recording devices, and the manner and location of their operation are also set out in the rule. If there are multiple requests for electronic coverage, pooling arrangements are required, and on-camera reporting and interviews shall only be conducted outside of the courthouse.

APPENDIX F (05-31-11 mins)

Sec. 11-1. Form of Motion and Request

Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing [and shall, except in the case of a request, have annexed to it a proper order, and a proper order of notice and citation, if one or both are necessary]. A motion to extend time to plead, respond to written discovery, object to written discovery, or respond to Requests for Admissions shall state the date through which the moving party is seeking the extension.

(a) For civil matters, with the exception of housing and small claims matters, when any motion, application or objection is filed either electronically or on paper, no order page should be filed unless an order of notice and citation is necessary.

(b) For family, juvenile, housing and small claims matters, when any motion, application or objection is filed in paper format, an order shall be annexed to the filing until such cases are incorporated into the Judicial Branch's electronic filing system. Once these case types are incorporated into such electronic filing system, no order page should be filed unless an order of notice and citation is necessary.

(c) Whether filed under subsection (a) or (b), [S]such motion, request, application or objection shall be served on all parties as provided in Sections 10-12 through 10-17 and, when filed, the fact of such service shall be endorsed thereon.

COMMENTARY: Motions for extension of time are frequently filed asking "for 30 days." As a result, it is unclear whether the movant is requesting an extension which ends thirty days after the file date of the motion or thirty days after the motion is granted. That difference can be a month or more, resulting in confusion for the parties and unnecessary motion practice to sort out the confusion.

The new subsections (a) (b) and (c) are intended to provide for the electronic filing and processing of documents and orders, and the maintenance of court records, where the present terminology, filing requirements or processes that are applicable in a paper environment result in confusion or redundancy when applied to an electronic environment.