COMMITTEE TO EXPEDITE CHILD PROTECTION APPEALS SUBCOMMITTEES MEETING

Thursday March 30, 2010 @ 10:00 am, Office of the Chief Child Protection Attorney (CCPA), 330 Main Street in Hartford.

Attendance: Judge Keller, Judge Foley, Attorney Susan Pearlman, Attorney Carolyn Signorelli, Attorney Paul Hartan, and Attorney Cynthia Cunningham

Materials Distributed: Attorney Hartan distributed "Timeline for Appeals" quick chart.

Meeting Minutes

Judge DiPentima has been appointed as the new Chief Judge of the Appellate Court. As a result, this committee needs a new chairperson.

Trial Court Record Subcommittee

Should the JM Clerk have to copy and send the file if the appeal is not pursued? If they are made aware within the 10 days that the appeal will not be pursued, they don't have to send the record.

Attorney Pearlman and Judge Keller suggested that copies of the Transmittal Form Juvenile Matters Appeals be provided to counsel of record and to the trial Judge.

Resolution:

Attorney Cunningham will send instructions out to the DCC-JMs asap:

1.) To forward the complete trial court record to the AC within 10 days of filing the appeal, pursuant to PB 68-1;

2.) To provide copies of the JD-JM-167 Transmittal Form Juvenile Matters Appeals to counsel of record and the trial Judge;*

3.) To specify when documents being sent to the AC are additions to the case file and that the full-record was previously sent.*

*Attorney Cunningham will propose revisions to the current JD-JM-167 form to reflect these changes and make it easier for the SCJM Clerks to comply with these directives.

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Fee Waiver/Motion to Extend Subcommittee

PB rules re: waiver of fees are 63-1(c)(1); 63-6; 79-1.

Options proposed by Judge Foley:

1.) Remove fees, costs and security from juvenile appeals;

-how to handle self-represented parties?
-how will the court reporter (preparer of transcripts) get paid?

2.) Require the fee waiver motion to be filed with the appeal;

3.) Change the language in 63-1(c)(1) to exclude child protection appeals;

4.) Automatic fee waiver, subject to hearing upon objection;

5.) Add language to 79-1 requiring motions to be filed asap;

6.) Exempt motions to waive fees from the tolling language;

7.) Repeal the motion to extend from the juvenile matters appeals rules;

8.) Repeal the juvenile review process in 35a-21– the vast majority of reviews don't result in appeals being filed.

Other Suggestions:

Move all juvenile appeal PB rules to chapter 79.

Current CCPA rules require the trial attorney to file the motion to withdraw/extend time and fee waiver. Put that language in PB 35a-21.

Require the trial attorney to file the motion to withdraw/extend time, fee waiver, financial affidavit and the appeal form signed by the client, all at the same time.

Propose amendments to the Rules Committee and if approved, make a combined form for filing the motion to withdraw/extend time, fee waiver, financial affidavit and the appeal form signed by the client.

Add language "except juvenile" to PB 63-6 and other AC rules.

Have 40 days be the absolute maximum to file the appeal.

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Expedited Transcript Subcommittee

The trial court generally orders transcripts for the 7 findings in TPR cases or oral decisions.

Pursuant to PB 64-1, the AC puts the burden on counsel to make the record complete.

Judge Keller encourages the Juvenile Judges to enter oral decisions for OTCs and defaults, also to make use of the PB Rule that consolidates the OTC and neglect petition.

Attorney Signorelli reported that only 1/3 of the appellate reviews conducted requested an expedited transcript.

When the fee waiver is granted, CCPA rules require that trial counsel to request expedited transcript for review to determine if the appeal is justified.

Suggestions:

Propose amendments to PB 35a-21 to require trial counsel to request expedited transcripts if the fee waiver is granted (CCPA pays) and the appeal is signed by the client;

Include expedited transcript in the proposed form;

Have a conversation about proposed rule changes with the Court Reporters.

General Discussion:

Possible points of delay:

1.) The time required to write an AC child protection decision;
2.) Motions for extension being granted;
3.) Extensions to the briefing schedule;
4.) The timing of the argument.

With its current procedures, the AC is trying to balance the child's need for permanency with the rights of the parents.

Judge Foley indicated that CT rated very poorly in the recently conducted Child and Family Services Review (CFSR) with respect to achieving permanency in a timely fashion; bottom line is that we need to get to permanency more quickly. A review of CT's timeliness versus other states, when a case is appealed, revealed that we were last in the nation; it takes 547 days to get to a decision when there is an appeal filed.

Judge Foley has prepared a power point presentation on ASFA and where CT stands.

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Attorney Pearlman asked: why are we applying regular, traditional Appellate rules to this specialized, sensitive area of the law? Maybe we need to try to change the general mindset about this area of the law.

Judge Flynn has submitted proposed changes to PB 63-3 to require the party to sign the appeal form.

Appellate Advisory Committee adopting rules can take a bit of time.

There are currently only a limited number of attorneys doing just appellate work.

A total of 20 days to get a transcript and conduct a proper review isn't really much time.

Additional Suggestions:

Attorney Pearlman and Judge Foley suggested providing training to AC Clerks about juvenile matters – children, foster parents, ASFA timelines, DCF & federal funding. Maybe CCPA can get an out of state speaker for attorneys and Judges from a state that has made changes successfully and to address how to deal with non-compliance. In CT, Judges are held accountable at reappointment hearings when they impose sanctions. Judge Keller indicated that SCIP funds are possibly available to support this training.

Judge Keller suggested that the committee consider proposing a whole new chapter to the PB for juvenile appeals specifically and exclusively.

Should we propose legislation?

Attorney Hartan suggested that there is a possible opportunity to get self-represented party failure to file cases off the docket. Currently, if the required preliminary papers are not filed with the appeal form, there is a hearing in order to issue an order to file the papers with a due date. The AC is going to have to decide if they are willing to issue the NISI order to file the papers in 10 or 20 days. This could potentially move cases along. PB 60-3 allows the AC to suspend the requirements of any rule.

Provide copies of this committee's work to all AC Judges to get their input and help; they should be informed and part of the process.

Next Steps

Judge Keller will look at other state's rules.

Judge Foley will draft proposed changes to PB 35a-21 and 79-1.

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