

COMMITTEE TO EXPEDITE CHILD PROTECTION APPEALS

Thursday March 4, 2010 @ 10:00 am, Supreme Court Attorney Conference Room, 231 Capitol Avenue in Hartford.

Attendance: Judge Flynn, Chief Judge of the Appellate Court, Judge Keller, Chief Administrative Judge for Juvenile Matters, Judge Foley, Attorney Susan Pearlman, Attorney Carolyn Signorelli, Attorney Paul Hartan, Attorney Jill Begemann, and Attorney Cynthia Cunningham

Materials Distributed

NCSC-Expediting Dependency Appeals; Adoption and Permanency Guidelines, Improving Court Practice in Child Abuse and Neglect Cases; Sample Appellate Court Docket; Termination of Parental Rights Proceedings Timeline, Supreme and Appellate Court; Juvenile Appeals for Court years 2008-2009 and 2009-2010; Problems/Issues/Ideas list.

Meeting Minutes

Judge Flynn provided an overview of the Appellate Court (AC) process. Certain cases must go to the Supreme Court, but the bulk of the appeals come to the AC. The AC rules require that all ready cases appear on a printed docket. The cases are then assigned to a specific date by the Chief Judge. Judges are assigned to hear cases by the Clerk from a random pool. The Clerk can only assign a case to a panel when all of the briefs and the record have been filed. The case is then assigned to the first term next to be heard. Once the cases are heard, they are decided quickly. Once decided by the AC, it goes to the Reporter of Judicial Decisions for another review, edits, and correction of citations, if necessary. It can take one month to five weeks for publication of the decision.

Once the briefs are closed out, the Chief Justice or the Chief Judge of the AC can, under existing rules, specially assign cases. A new policy has been approved so that cases where the briefs have been filed in April or May will not have to wait until the fall term to be scheduled. Those cases can be specially scheduled and heard and likely be decided before the Judges leave for the break in July. That should result in some cases being resolved approximately four months sooner. In cases eligible under the new policy, the AC Clerk's Office will send a letter to the attorneys indicating that the case is ready and assignable.

It appears that noncompliance with the briefing schedule and requested filing extensions may cause the most delays. AC Rules establish the briefing schedule and sometimes the lawyers request extensions. Sometimes motions can delay the briefing schedule. The AC has a motions docket weekly, hearing 8 – 10 motions in panels.

Attorneys are required to file preliminary papers before the AC Clerk can even set up a briefing schedule. If the attorneys do not file their preliminary papers, the case is put on the next monthly calendar for this issue to be resolved. The AC Clerk's Office sends pro-se parties a packet with sample documents that need to be filed.

Judge Keller indicated that the juvenile courts are required to comply with recommendations made as a result of recent federal reviews (Child and Family Services Reviews (CFSR)). In child protection cases where an appeal has been filed, we are currently not complying with federal and state law permanency time lines.

Some states have specific AC Rules for juvenile matters cases, such as:

- Clients have to sign the appeal form in addition to their attorneys;
- Extensions are only allowed for extraordinary cause;
- AC allows the filing of limited briefs.

Judge Flynn expressed concerns about treating juvenile matters cases differently than other cases. Different rules may interfere with the due process rights that the parties are entitled to. The AC needs to make sure that the people involved in their cases are treated fairly. There was a recent juvenile matters case where a pro se party did not receive a copy of the state's brief and the party was only made aware of this on the day of argument by a question from the bench. The AC wants to move the business along, but parental rights are so important, they want to be careful not to trample on those rights. They need to achieve a balance.

Judge Foley suggested that we identify the problem areas and then form subcommittees to address specific issues and propose solutions.

In general there needs to be more of a sense of urgency at the various points in a child protection case that is being appealed: filing, motions to extend and fee waivers; filing preliminary papers; briefing schedules/requests for continuances/continuances granted by the AC Clerk; receipt of expedited transcripts; deadline for receipt of written decisions. Judge Foley further indicated that there needs to be a heightened awareness that children need to be moved through in an expedited fashion without jeopardizing the due process rights of the litigants.

Some possible solutions were discussed by the group:

- If there was rule requiring the client to sign the appeal form, the fee waiver may no longer be required; the majority of juvenile matters clients have previously been found indigent.
- If attorneys or pro-se parties fail to meet their deadlines, consequences such as dismissal should be considered.
- Delays can probably be reduced if the existing rules are strenuously enforced.
- Only a Judge should be able to grant an extension.
- Utilize sanctions, fines and penalties, such as no oral argument, if an appellee doesn't file timely.

- An expedited briefing schedule may possibly impact the quality of the briefs; a corresponding rule allowing a limited brief should be considered.
- If it is a “sufficiency of the evidence” and/or “abuse of discretion” brief, maybe those case can be scheduled on a separate docket. Do they always need to be entitled to an oral argument?
- Judge Keller suggested that the AC consider putting experienced juvenile matters JTRs on panels that decide child protection appeals. Judge Flynn replied that he already uses more referees than any other Appellate Court in the United States.

Judge Keller has advised the juvenile trial judges not to order briefs unless they are presented with a novel area of the law.

In child protection practice at the trial court level, the attorneys have already adopted to quicker time frames.

The Chief Child Protection Attorney’s (CCPA) office pays for expedited transcripts. Trial attorneys are supposed to file their request for transcript with the motion to extend time.

Judge Keller asked Judge Flynn his opinion on the response to possible requests to issue AC written decisions more quickly. Judge Flynn indicated that any expedited deadlines imposed would be met. He said that in some states where short deadlines are imposed, staff attorneys write the decisions before the cases are heard, thus removing judges from the judicial process. He opposes that.

It appears that Supreme Court written decisions currently take longer than AC written decisions.

Attorney Pearlman indicated that her office has only finite resources for AC work. Her office has experienced significant staffing reductions over the last five years while the number of pending AC cases has increased. The same attorneys have to do both trial court work and AC work; they do not receive assistance from other units within the AG’s Office.

The AC issues approximately 500 written decisions per year.

Juvenile matters cases represent only 2-3% of the total AC docket.

At SCJM Willimantic, if an expedited transcript is requested, it takes the Court Monitor five days to produce it.

At future meetings, the committee will work on suggestions for the AC Rules Committee.

In Preparation for the Next Meeting:

- Attorney Signorelli will check with the billing unit in her office for data on the number of expedited transcripts that have been requested. She will also provide the committee with copies of her recent AC Rules proposals.
- Attorney Pearlman will check her statistics for the time that elapses from the date of trial court disposition to the date that the appeal is filed.
- Attorney Hartan will get data on cases where extensions have been granted, who requests the extension, and how many extensions are requested/granted per case (for this court year and last court year).
- Judge Foley will review and identify some of the AC Rules for discussion at future meetings.

Draft minutes with amendments unanimously approved on 3/25/10.