

Minutes  
Committee to Expedite Child Protection Appeals  
Rules Subcommittee  
January 13, 2011

The Rules Subcommittee met on Tuesday, January 13, 2011 at 3:00 pm at 75 Elm Street, Hartford.

Members in attendance: Hon. Alexandra D. DiPentima, Hon. Francis J. Foley, Atty. Michael Taylor covering for Atty. Christine Ghio, Atty. Paul Hartan.

Materials provided: *Draft Version of Chapter 79* (attached). Mentions of Chapter 79 below refer to the *Draft Version of Chapter 79* document.

The meeting was called to order at 3:05 pm by Judge DiPentima.

1. Judge DiPentima welcomed the members of the subcommittee.
2. The subcommittee unanimously approved the minutes of the November 23, 2010 meeting.
3. Judge DiPentima suggested that the subcommittee begin with a review of the rules drafted by Judge Foley for the revised chapter 79. Judge DiPentima began by explaining the procedure that the draft rules would need to follow in order to get approval. Attorney Hartan also made a suggestion that the draft chapter 79 follow the same organization as the general rules.

The subcommittee members discussed and agreed that the draft title of chapter 79 be "Appeals in Child Protection Matters." Discussion continued as to section 79-1(a). There was concern as to the term "expedited" being used and it was agreed that it be removed throughout the draft. In addition, the language "and other matters on the civil session of the superior court for juvenile matters specified in Chapter 35a of the Practice Book" would be removed from 79-1(a).

The subcommittee discussed and agreed that section 79-1(b) should be moved to the commentary. As to 79-1(c), the subcommittee discussed tailoring the draft language so that it is similar to the existing language from section 84-12.

As to section 79-2, Attorney Hartan suggested that the section be organized in a way that is similar to the structure of the general rules. It was agreed that the section should begin with the language "Unless a different time period is provided by statute." Attorney Taylor suggested that the language of the fourth sentence of section 79-2(a) be modified from "The trial attorney shall..." to "The trial attorney or self-represented party shall...". The subcommittee discussed concerns as to the recourse to a party if their application for fee waiver was denied. A suggestion to use language from section 63-6 for the last sentence of 79-2(a) section 63-6 was made.

Section 79-2(b) was drafted from section 35a-21(b) with any variance due to concerns from the Chief Child Protection Attorney. The subcommittee discussed and deferred discussion to future meeting. The subcommittee debated the draft version of section 79-2(c) and agreed to use the language from 35a-21(c).

The subcommittee agreed that section 79-2(h) should be discussed with the full committee to receive input from Justice Eveleigh.

Section 79-5(e) was reviewed and it was agreed that the draft version be replaced with the following: "The attorney for the minor child and/or counsel for the guardian ad litem may submit a brief or a statement in accordance with §67-13 at any time but in no event later than ten days after the filing of the appellee's brief as in (c) above."

Section 79-5(f) was debated by the subcommittee as to whether there was need to formalize the internal policy that is currently being used. This will be discussed along with 79-5(g) at the next meeting. Section 79-5(h) will be updated using language from the standing order on the Appellate Court webpage.

Attorney Taylor suggested changing the 63-4 papers to include an option for waiving oral argument.

Judge DiPentima and Attorney Hartan will work on drafting chapter 79 to follow the organization of the general rules and distribute the document to the subcommittee prior to the next meeting.

Attorney Taylor agreed to provide statistical data from his office on the appeal reviews they have completed.

4. The next meeting will be held the first week of February. The date and time will be announced.

5. Meeting adjourned at 4:20 pm

## Attachment

### *DRAFT FOR DISCUSSION ONLY*

#### CHAPTER 79

#### EXPEDITED APPEALS IN CERTAIN JUVENILE MATTERS

##### ***§79-1 (New) Expedited Appeals defined. Construction and Interpretation***

(a) Definition. Child protection expedited appeals in juvenile matters include all appeals from judgments in all proceedings concerning uncared-for, neglected or dependent children and youths within this state, termination of parental rights of children committed to a state agency, contested matters involving termination of parental rights or removal of guardian transferred from the probate court, and other matters on the civil session of the superior court for juvenile matters specified in Chapter 35a of the Practice Book.

(b) Construction and Interpretation. The construction, interpretation and application of all the Practice Book rules and statutes as they relate to child protection expedited appeals shall favor the prompt assignment and disposition of the case consistent with due process to the end that the safe and permanent placement of children shall obtain without undue delay.

(c) Application of Other Rules of Appellate Procedure. The general rules of procedure for appellate practice as set forth in Chapters 60 through 86 shall apply to all appeals except as are specifically set forth herein.

*(Sec 46b-121(a)(1) "Juvenile matters "defined; Sec 46b-142(d) Termination of Parental Rights proceedings entitled to an expedited hearing in the Appellate Court)*

##### **Sec. 79-2. Initial Appellate Procedure. Time to Appeal; Filing; Costs**

(a) Expedited appeals from judgments of the superior court in child protection matters shall be taken within twenty days from the issuance of notice of the rendition of the decision or judgment from which the appeal is taken. The appeal shall be filed with the clerk in charge of juvenile matters with sufficient copies so that the clerk may distribute copies as required. An appellant who is indigent may make written application to the court before which the matter was heard for waiver of fees, costs, and expenses of transcripts and for appointment of appellate counsel within twenty days of the decision or judgment. The trial attorney shall be responsible for the preparation and filing of such documents including a current financial statement executed under oath. The judicial authority shall act *ex parte* on the application. A denial of the application may be addressed solely by motion for review under P.B. §66-6.

(b) In the event the trial attorney declines to pursue an appeal and the indigent client expressly wishes to appeal, the trial attorney shall notify the Office of the Chief Child Protection Attorney of the need for an appellate review attorney. The trial attorney shall file a motion for an additional twenty day extension of time to appeal and a motion for expedited transcript. If the client seeks a waiver of fees, costs and expenses of transcript and appointment of an appellate review attorney, the motions shall be filed simultaneously with a) the motion for extension of time, b) a current financial affidavit and c) the motion for expedited transcript.

If the second attorney determines that there is no merit to an appeal, that attorney shall make this decision known to the judicial authority, *to the party* and to the chief child protection attorney at the earliest possible moment, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal in which to secure counsel who, if qualified, may file an appearance to represent the party on appeal. *(From P.B. §35a-21)*

(c) The time to take a child protection appeal shall not be extended past forty days (the original twenty days plus one twenty day extension for appellate review) from the date of issuance of notice of the rendition of the judgment or decision, notwithstanding the provisions of sections 63-6 or 63-7 as they may relate to other classes of appeal.

- (d) Appeal Period. As used in this rule, "appeal period" includes any extension of such period obtained pursuant to Section 66-1 (a). When appeal period begins if notice of the judgment or decision is given in open court, the appeal period shall begin on that day. If notice is given only by mail, the appeal period shall begin on the day that notice was mailed to counsel and pro se parties of record by the trial court clerk. The failure to give notice of judgment to a non-appearing party shall not affect the running of the appeal period.
- (e) How new appeal period is created. Motions that, if granted, would render a judgment or decision ineffective include, but are not limited to, motions that seek: the opening or setting aside of the judgment; a new trial; reargument of the judgment or decision; or any alteration of the terms of the judgment. Motions that do not give rise to a new appeal period include those that seek: clarification or articulation, as opposed to alteration, of the terms of the judgment or decision; a written or transcribed statement of the trial court's decision; or reargument of a motion listed in the previous paragraph. If a party files, pursuant to Section 66-6, a motion for review of any such motion, the new appeal period shall begin on the day that notice of the ruling is given on the motion for review.
- (f) Who may appeal during new appeal period. If a new appeal period arises due to the filing of a motion that, if granted, would render a judgment or decision ineffective, any party may take an appeal during the new appeal period regardless of who filed or prevailed upon such motion.
- (g) What may be appealed during new appeal period. The new appeal period may be used for appealing the original judgment or decision and/or for appealing any order that gave rise to the new appeal period. Such period may also be used for amending an existing appeal pursuant to Section 61-9 to challenge the ruling that gave rise to the new appeal period. Rulings on motions for waiver of fees, costs and security or motions for appointment of counsel may not be appealed during the new appeal period but may be challenged by motion for review in accordance with Section 66-6.
- (h) When motion to stay briefing obligations may be filed. If, after an appeal has been taken but before the appeal period has expired, any motion is filed that, if granted, would render the judgment or decision -ineffective, any party may move to stay the briefing obligations of the parties. (NEW) *Any motions to stay, delay or extend the briefing obligations shall be assigned to a judge or justice of the appellate court for ex parte review. A brief stay, delay or extension may be granted only for good cause shown.*
- (i) Simultaneous filing of motions. Any party filing more than one motion that, if granted, would render the judgment or decision ineffective, shall file such motions simultaneously insofar as simultaneous filing is possible.

(Note: this proposal includes language from §§ 63-1, 79-1, 35a-21, 63-6 )

### **Sec 79-3 Preparation of the Record.**

- (a) The record on appeal shall be prepared in accordance with chapter 68 of these rules.
- (b) In addition to the clerk's duties as specified in Section 63-3, the clerk of the superior court in charge of juvenile matters shall also send a copy of the endorsed appeal form and the docket sheet to the commissioner of children and families, to the petitioner upon whose application the proceedings in the superior court were instituted, unless such party is the appellant, to any person or agency having custody of any child who is a subject of the proceeding, and to all other interested persons; and if the addresses of any such persons do not appear of record, such juvenile clerk shall call the matter to the attention of a judge of the superior court who shall make such an order of notice as such judge deems advisable. ( formerly §79-2, P.B. 1978-1997, Sec. 4166B.1.)

### **Sec 79-4 Transcript of Proceedings. Filing.**

(To be discussed 63-4 )

[ N.B. 63-4, 63-8, and 63-8A are lengthy, complex and convoluted. They are subject to likely change by the 12 member Committee on Court Recording Monitors and Court Reporters "examining the myriad of issues surrounding the retention and accessibility of transcripts." It may be appropriate to avoid wading in these waters at this time. The transcripts are currently being prepared quickly and efficiently. We could just leave this title with the word "Reserved" FJF ]

## **Sec 79-5 Time for Filing Briefs; Assignment for Oral Argument**

- (a) Briefs shall be prepared and submitted in accordance with Chapter 67 of these rules except that the time for filing briefs in expedited appeals shall be abbreviated and strictly observed.
- (b) Except as otherwise ordered, the appellant's brief as described in § 67-3 shall be filed within \_\_\_\_ days after the delivery of the transcript or the filing of the appeal whichever later occurs.
- (c) Except as otherwise ordered the brief of the appellee shall be filed within \_\_\_\_ days after the filing of the appellant's brief.
- (d) The appellant may within ten days of the filing of the appellee's brief, file a reply brief.
- (e) The attorney for the minor child and/or the guardian ad litem or guardian's counsel may submit a brief or a statement in accordance with §67-13 at any time but in no event later than ten days after the filing of the appellant's brief as in (c) above.
- (f) Except as otherwise ordered, the case shall be deemed ready for assignment for oral argument ten days after the appellant's brief is due as in (c) above.
- (g) The unexcused failure to file briefs in accordance with this schedule may result in a dismissal of the appeal pursuant to §85-1, a refusal of the court to accept the late brief and/or an assignment of the case without the delinquent brief.
- (h) Notwithstanding the provisions of §69-3 child protection appeals shall ordinarily take precedence for assignment for oral argument.  
( *Sec 46b-142(d) Termination of Parental Rights proceedings entitled to an expedited hearing in the Appellate Court*)

## ***Sec. 79-6 Inspection of Records***

The records and papers of any juvenile matter shall be open for inspection only to counsel of record and to others having a proper interest therein only upon order of the court. The name of the child or youth involved in any appeal from a juvenile matter shall not appear on the record of the appeal. ( Formerly PB 79-3P.B. 1978-1997, Sec. 4166B.2.)

## ***Sec. 79-7 Hearings; Confidentiality***

- (a) For the purpose of maintaining confidentiality, upon the hearing of an appeal from a juvenile matter, the court may exclude any person from the court whose presence is unnecessary. (b) All proceedings shall be conducted in a manner that will preserve the anonymity of the child or youth.  
(Formerly 79-4, P.B. 1978-1997, Sec. 4166B.3.) (Amended Oct. 15, 2003, to take effect Jan. 1, 2004.)