

Minutes  
Committee to Expedite Child Protection Appeals  
Rules Subcommittee  
February 8, 2011

The Rules Subcommittee met on Tuesday, February 8, 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 *Chapter 79 Appeals in Child Protection Matters*.

The meeting was called to order at 3:02 pm by Judge DiPentima.

1. Judge DiPentima welcomed the members of the subcommittee.
2. The subcommittee reviewed the minutes from January 13, 2011. Judge DiPentima requested that the original working draft of Chapter 79 be attached to the minutes. The subcommittee unanimously approved the minutes of the January 13, 2011 meeting as amended.
3. Prior to review of the revised draft of Chapter 79, Judge DiPentima raised two issues that will be addressed by the full committee. Last spring the committee recommended that the appeal form in juvenile appeals should be signed by the party taking the appeal even if that person is represented by an attorney, unless the party is a minor child. The reason behind this proposal was to ensure that the party is knowingly involved in the appeal.

Attorney Zivyon mentioned that there may be attorneys who file appeals in cases where they have lost contact with their clients. Attorney Taylor agreed that this situation could occur especially with attorneys who represent parents.

The other issue for discussion by the full committee is whether a juvenile-specific appeal form is needed.

Attorney Taylor raised the idea of modifying the 63-4 papers to allow for the waiver of oral argument. He also raised the idea of having pre-argument conferences in child protection appeals if needed.

4. Judge DiPentima asked the subcommittee to review and comment on the draft version of Chapter 79. Under the Official Commentary section of section 79-1, the subcommittee agreed that the word "expedited" be removed.

As to section 79-2, entitled "Time to Appeal", Attorney Taylor raised concerns with the language of section 79-2(b). The subcommittee agreed to move 79-2(b)(a) to 79-2(a) and to modify the language and format of section 79-2(a) to mimic the general provisions section of section 63-1. Although there were concerns about potential delays to the 40 day limitation based on the language in section 63-1(a) beginning "If circumstances give rise...", the subcommittee felt more discussion would be needed. The subcommittee then decided that the draft section 79-2(b) language will be modified so that it would be similar to the current 63-1(b) language excluding mentions of criminal and civil jury cases.

The second paragraph beginning "If, within the appeal period,..." of draft section 79-2(c) was discussed next. Concerns were raised about the draft language. The subcommittee decided that the language should be revisited after the procedures are established relating to fee waivers in the appeal process. There were concerns about using the fee waiver as a delay tactic in connection with the motion for

extension of time. The draft 79-4 language as to waiver of fees doesn't automatically extend the appeal period. Attorney Taylor was in favor of making attorneys/parties file a motion for extension per section 66-1.

The subcommittee agreed that the second 79-2(d) should be amended to section 79-2(e). In addition, the following language should be added at the beginning of 79-2(e): "Unless a new appeal period is created pursuant to 79-2(c) or 79-2(d),".

The subcommittee discussed draft section 79-3, entitled "Filing of the Appeal". Attorney Hartan asked that the subcommittee keep in mind the briefing schedule when discussing time frames for section 79-3. The idea of requiring parties to order expedited transcripts in all child protection appeals was raised. The subcommittee agreed that this should be discussed with the full committee.

The subcommittee agreed that 79-3(a) should be retitled "General Provisions" to instruct either an attorney or self-represented party on how to file the appeal. The first sentence of section 79-3(a) should be modified to "If the attorney or self-represented party files..."

The subcommittee changed the heading of section 79-3(b) to "If the trial attorney for an indigent party declines to file the appeal". In addition, the word "client" throughout this section should be replaced with "party".

Attorney Taylor suggested that 79-3(c) be retitled "Review by Office of the Chief Child Protection Attorney". The subcommittee also decided that there should be two subsections as follows:

- (1) If the appellate review attorney determines that there is merit to an appeal, that attorney shall file the appeal in accordance with § 79-3(a).
- (2) If the reviewing 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. The reviewing attorney shall inform the party, by letter, of the balance of the time remaining to appeal as a self-represented party, or, to secure counsel who, if qualified, may file an appearance to represent the party on appeal. A copy of the letter shall be sent to the clerk for juvenile matters forthwith. (*From P.B. §35a-21*)

Section 79-4 was the last section to be discussed. Attorney Zivyon requested that the sentence beginning "The judicial authority shall..." be amended to "The judicial authority may...". The subcommittee also agreed that the section should be modified to create two subsections as follows:

- (a) A party who is indigent and desires to appeal 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 the application which must be under oath and recite, or it must be accompanied by an affidavit reciting, the grounds upon which the applicant proposes to appeal and the facts concerning the applicant's financial status. The judicial authority may act *ex parte* on the application. If the court is satisfied that the applicant is indigent and has a statutory or constitutional right to court appointed counsel or a statutory right to appeal without payment of fees, costs and expenses, the court may (1) waive payment by the applicant of fees specified by statute and of taxable costs, and (2) order that the necessary expenses of prosecuting the appeal be paid by the state. The court may not consider the relative merits of a proposed appeal in acting upon an application pursuant to this section.

(b) The filing of a waiver of fees and costs will not extend the appeal period. A denial of the application for a waiver of fees and costs may be addressed solely by motion for review under section 66-6.

Language will be added to (b) to address that the appeal period may be extended if a party files a motion for the Appellate Court to review the denial of the fee waiver.

5. Judge DiPentima will have a full committee meeting prior to scheduling another subcommittee meeting. The proposed time for the full committee meeting is Thursday, February 24, 2011 at 3:00 pm at the Appellate Court. Inquiries will be made as to availability of the full committee. If necessary, a new date will be selected.

6. The meeting adjourned at 4:35.

