

Minutes
Committee to Expedite Child Protection Appeals
Rules Subcommittee
March 24, 2011

The Rules Subcommittee met on Thursday, March 24, 2011 at 10:00 am at 75 Elm Street, Hartford.

Members in attendance: Hon. Alexandra D. DiPentima, Hon. Christine E. Keller, Hon. Francis J. Foley, Atty. Michael Taylor (on behalf of Atty. Christine Ghio), Atty. Benjamin Zivyon (on behalf of Atty. Susan Pearlman), and Atty. Paul Hartan.

Materials provided: Draft *Chapter 79 Appeals in Child Protection Matters*.

The meeting was called to order at 10:00 am by Judge DiPentima.

1. Judge DiPentima welcomed the members of the subcommittee.
2. The subcommittee unanimously approved the minutes of the February 8, 2011 meeting. Judge Keller abstained from the vote.
3. Judge DiPentima raised two issues that will need to be addressed in review of the revised draft Chapter 79: untimely appeals and briefing schedule.

As to the revised draft Chapter 79-1, Atty. Zivyon requested that the reference to the statute regarding orders of temporary custody (§46b-129(b)) be included in the official commentary. Following discussion, the subcommittee concurred.

The subcommittee, after discussion, revised the draft version of section 79-1 as follows:

Child protection 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, petitions for transfers, removal or reinstatement of guardianship and contested matters involving termination of parental rights or removal of guardian transferred or appealed from the probate court.

Judge DiPentima asked for comments as to the revised draft section 79-2. Discussion began with revised draft section 79-2(e). Atty. Hartan expressed concerns about the clerk rejecting the appeal. Atty. Taylor mentioned that a late appeal is an issue that can be waived. Atty. Zivyon suggested that the late appeal be filed with the Appellate Court and not with the Superior Court. Judge DiPentima stated that the appellee has 10 days to file a motion to dismiss if the appellant filed the appeal untimely. It is then within the Appellate Court's discretion to grant or deny the motion to dismiss. Judge Keller expressed concerns about requiring the judges to rule on an application for waiver of fees and costs when the application is filed untimely and the potential fiscal impact.

The discussion transitioned to revised draft section 79-4. Judge Keller expressed concerns with the revised language of the second to last sentence, specifically with the use of "legitimacy of the application". Judge Keller suggested replacing that language with "indigency of applicant". Atty. Taylor suggested revising the language to be more specific. Discussion commenced about the ability of a judge to deny an application for waiver of fees and costs by virtue of it being filed untimely. The subcommittee

came to a consensus and revised the language of the second to last sentence of draft section 79-4(a) as follows:

If the trial court calls into question the applicant's indigency, statutory right to court appointed counsel or statutory right to appeal, then an immediate hearing shall be scheduled. In the case of an untimely filed application, the court may deny the application without a hearing.

The Subcommittee agreed that the revisions to draft 79-4(a) removed the need for the draft second paragraph under 79-2(e) setting forth the procedure that the clerk for juvenile matters would follow if an appeal was filed untimely.

Regarding 79-2 (c), the Subcommittee agreed to replace the phrase "in the previous paragraph" in the last sentence of the first paragraph with "above."

Judge Keller will work to revise section 35a-21 of the juvenile rules so that it corresponds with the revised Chapter 79 rules.

Judge DiPentima asked the subcommittee to review revised draft section 79-3. Judge DiPentima stated that draft section 79-3(b) will be revised to "If the trial attorney..." instead of "In the event the trial attorney...".

The question was raised as to whether the rules should include the \$100 threshold language contained in 63-6. Following discussion, it was determined that the rules in Chapter 79 would not include such language.

As to revised draft section 79-3(c), the subcommittee revised the language of the second to last sentence to "...at the party's own expense" from "...at the parties' own expense".

Discussion returned to revised draft section 79-4 and the use of the term "ex parte". It was decided to change "ex parte" to "without a hearing." In addition, in the third sentence of (a), the word "shall" was changed to "may."

Atty. Zivyon raised concerns about not always getting notice of the ruling on an application for waiver of fees. Judge Keller stated that the application of waiver of fees form would be revised to include a certification section. In addition, the juvenile clerk could notify counsel of the ruling on the application for waiver of fees to file an appeal. Atty. Zivyon also requested language be added to the commentary about the opposing party's right to file a motion to reconsider.

Judge DiPentima asked if the subcommittee had any issues with the revised draft section 79-7 which removed "for briefing". The subcommittee agreed with the revision.

Judge DiPentima raised the issue of additional ways to expedite appeals. One suggestion addressed the official release date which will be part of draft section 79-13. Should it be the actual publication date or does the electronic release date suffice? A suggestion was to include the official release date on the notice of decision sent to the parties involved in the appeal so it is clear.

Atty. Taylor's suggestion as to the ability to waive the right to oral argument was mentioned as an additional possibility of reducing the time to appeal.

A discussion ensued regarding the applicability of proposed rule 79-11 to the Supreme Court. Justice Eveleigh's input will be sought on this topic at the next full committee meeting.

As to draft section 79-6 Briefs, the subcommittee discussed the current timeframes to file briefs, as well as the timeframes proposed by both the ABA and NCJFCJ. Atty. Hartan raised a concern that shortening the timeframe may lead to an increase in the filing of motions for extension of time. Judge DiPentima suggested that the full committee needs to meet to discuss this topic.

Judge Foley raised the issue of transcripts. Discussion commenced about whether specific timeframes were necessary relating to the receipt of transcripts. The subcommittee inquired if there were any guidelines that the court reporters/monitors followed as to expedited versus standard transcript requests. The subcommittee at a prior meeting had discussed requiring expedited transcripts in all child protection appeals.

4. Judge DiPentima will have a full committee meeting prior to scheduling another subcommittee meeting. The proposed time for the full committee meeting is Thursday, April 7th, 2011 at 10:00 am at the Appellate Court. If members of the committee are not available, Friday, April 8th at 2:00 pm is the fallback option. Inquiries will be made as to availability of the full committee. If necessary, a new date will be selected.

5. The meeting adjourned at 11:42 am.