

Minutes
Committee to Expedite Child Protection Appeals
February 24, 2011

The Committee to Expedite Child Protection Appeals met on Thursday, February 24, 2011 at 3:00 PM at 75 Elm Street, Hartford.

Members in attendance: Hon. Alexandra DiPentima (chair), Hon. Dennis Eveleigh, Hon. Christine Keller, Hon. Francis Foley, Atty. Jill Begemann, Atty. Paul Hartan, Atty. Cynthia Cunningham, Atty. Ben Zivyon (on behalf of Atty. Susan Pearlman), Atty. Michael Taylor (on behalf of Atty. Christine D. Ghio), Atty. Carolyn Signorelli

Materials Distributed: *Draft Chapter 79 Appeals in Child Protection Matters*

The meeting was called to order at 3:03 PM by Judge DiPentima.

1. Judge DiPentima welcomed the members of the Committee.
2. The committee approved the minutes of the December 7, 2010 meeting. Atty Signorelli abstained from the vote.
3. Judge DiPentima raised three issues for the committee to remember while discussing the draft rules. The first issue was a proposal to the Advisory Committee on Appellate Rules by the prior Committee to Expedite Child Protection Appeals to revise the appeal form to require the signature of the party filing the appeal, in addition to any attorney. The second issue was whether it would be beneficial to create a juvenile specific appeal form. The third issue was whether any rule change as to motions for extension of time would apply to both the Appellate and Supreme Courts.

Judge DiPentima asked Atty Signorelli about her position as to fee waivers in child protection appeals. Atty Signorelli answered that it would be necessary to have either the fee waiver or, the appeal form be signed by the party. Judge Foley supported the position of requiring the party to sign the fee waiver prior to filing the appeal in lieu of requiring the party's signature on the appeal form.

Judge DiPentima asked that Atty Cunningham report on the progress of the FTR pilot. Atty Cunningham reported that there is progress being made by the IT department. They are completing work on background enhancements that will allow the court monitor to enter data to assist in the retrieval of the audio transcripts. Discussion ensued on the use of audio recordings versus paper transcripts.

Judge DiPentima posed the question of requiring expedited transcripts in all child protection appeals. The committee discussed the issue and was in favor of requiring expedited written transcripts.

4. Judge DiPentima requested the committee review the *Draft Chapter 79 Appeals in Child Protection Matters* document.

As to section 79-1, there were comments as to the definition of child protection matters. Atty Signorelli requested "orders of temporary custody" be added. Judge Keller requested that "transfers, removal or reinstatement of guardianship" be added. The new definition was suggested as follows:

"Child protection appeals in juvenile matters include all appeals from judgments in all proceedings concerning alleged or adjudicated uncared-for, neglected or dependent children and youths within this state, termination of parental rights of children, transfer, removal or reinstatement of guardianship, contested matters involving termination of parental rights or removal of guardian transferred from the probate court."

Language about orders of temporary custody will be included in the Official Commentary.

The committee reviewed section 79-2. A suggestion was made to update the first sentence of 79-2(c) as follows:

“If a motion is filed within the appeal period that, if granted, would render the judgment or decision ineffective, then a new twenty-day appeal period is created running from the date notice of the ruling on that motion is given.”

Judge Keller requested language be added to 79-2(d) stating “If a new appeal period is created under 79-2(c)” to make it clear.

Discussion commenced about 79-2(e). Judge Keller requested language be added to prevent the filing of late appeals. A suggestion was made to allow clerks to reject appeals when they are being filed late. Judge DiPentima asked Atty Hartan if he could gather information on pending child protection appeals concerning the date of judgment and the date the appeal was filed.

Section 79-3 was discussed next. As to 79-3(b), Judge Keller and Atty Signorelli were concerned with the draft language mentioning only “indigency”. They both suggested that additional language concerning eligibility for counsel was needed. Judge Keller also suggested additional language concerning the current financial affidavit. The suggested changes are as follows:

“In the event the trial attorney declines to pursue an appeal after a finding of indigency and eligibility for assignment of counsel by the Office of the Chief Child Protection Attorney and such party 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 party 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 signed by the person appealing and not his/her attorney except in the case of a minor child appealing, and (c) the motion for expedited transcript.”

Judge Keller suggested removing “if qualified” from section 79-3(c)(2) from the second sentence. In addition, “at party’s own expense” would be added to the end of the second sentence of 79-3(c)(2).

As to section 79-3(d), Atty Cunningham suggested replacing “docket sheet” with “case information form” in the first sentence to correspond with the existing juvenile form that is used. In addition, it was agreed to add “the Office of the Chief Child Protection Attorney” prior to “and to all other interested persons...”.

Section 79-4 was reviewed and discussed next. A question was raised about ruling ex parte on the application for waiver of fees and costs. Discussion centered around ruling ex parte on an application for waiver of fees and costs and whether a hearing would be required if denying a motion. A suggestion was made to add a language prior to the last sentence allowing the court to set the application down for an immediate hearing if there was a question as to the legitimacy of the application. In addition, a request to remove “or a constitutional right” was made. Judge Keller suggested adding language consistent with section 63-6 of the rules regarding the limited circumstances when the court can deny a fee waiver when the party does not have a statutory right to appeal.

Based on earlier discussion, it was recommended that section 79-7 Motions for Extension of Time for Briefing would apply only to the Appellate Court at this time.

Section 79-6 Briefs was discussed. Judge Foley complimented the progress made by the Appellate and Supreme Courts in reducing the time to appeal since certain internal policy changes have been made.

There followed discussion comparing the existing time to file briefs with the proposed ABA standards and the recommended briefing time frames by the NCJFCJ.

Atty Signorelli felt that, although it would be difficult, attorneys could comply with a condensed briefing schedule.

Atty Zivyon feels that quick resolution is best and in most cases the shorter briefing schedule could be achieved. However, he has concerns when the appealable issue is complex. The briefing schedule should be set so as not to affect the quality of the briefs.

Atty Taylor concurred that the brief is a very important part of the appeal. He shares concerns about narrowing the briefing schedule. He suggested other ways to reduce the time to appeal such as allowing the parties to waive the right for oral argument.

5. Justice Eveleigh updated the committee as to the status of juvenile appeals in the Supreme Court. All appeals have been argued and he hopes that the decisions will be completed within the next couple of months.

Atty Begemann reported that since March 2010 when the internal policies were changed at the Appellate court, the average time for a case to be ready for child protection appeals is 130 days which is a significant improvement. In addition, the number of days to argument has been reduced to 46-47 days.

Atty Taylor also reported on his experience as an appellate review counsel. He indicated that there was no appealable issue in 4 out of 5 appeals reviewed by his firm.

6. Notice of the next meeting will be sent to the committee members. The Rules Subcommittee will meet to continue working on the draft of Chapter 79. The next meeting of the Rules Subcommittee is scheduled for Thursday, March 24, 2011 at 10:00 am at 75 Elm Street, Hartford.

7. The meeting was adjourned at 4:40 PM.