

Minutes
Committee to Expedite Child Protection Appeals
April 8, 2011

The Committee to Expedite Child Protection Appeals met on Friday, April 8, 2011 at 2:00 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: Revised *Draft Chapter 79 Appeals in Child Protection Matters*

The meeting was called to order at 2:03 PM by Judge DiPentima.

1. Judge DiPentima welcomed the members of the Committee.
2. The committee unanimously approved the minutes of the February 24, 2011 meeting.
3. Judge DiPentima informed the committee that she would be meeting with Chief Justice Rogers next week to present and discuss the draft version of Chapter 79. At the final meeting in May, Judge DiPentima would like the committee to focus on what the Judicial Branch still has to do, including conforming the Superior Court rules with those proposed by this committee.
4. Judge DiPentima asked the committee to review the revised draft version of Chapter 79. Chapter 79-3(b) was discussed in relation to transcripts. Since the Rules Subcommittee proposed requiring expedited transcripts in all child protection appeals, Judge DiPentima informed the committee that it removed language relating to "motion for expedited transcripts." Judge Keller requested including additional language that would allow the Juvenile Practice Book rule 35a-21 to become obsolete. The new proposed draft of section 79-3(b):

If the trial attorney declines to pursue an appeal after a finding of indigency and a finding of eligibility for the assignment of counsel by the chief child protection attorney and the indigent 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 immediately request an expedited transcript from the court reporter, the cost of which will be billed to the Office of the Chief Child Protection Attorney in accordance with section 79-5. 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 and (b) a current financial affidavit signed by the person appealing and not by his or her attorney.

The proposed drafts of section 79-7 and 79-8 and their applicability to the Appellate and Supreme Courts was discussed. Discussion with the Chief Justice is necessary, but if it is concluded that the proposed drafts of 79-7 and 79-8 only apply to the Appellate Court then qualifying language will be added.

Judge DiPentima explained that the proposed draft of section 79-9 will follow the language of the proposed section 70-1 and section 70-2. Proposed sections 70-1 and 70-2 state the procedure the Appellate Court uses to decide certain cases without oral argument. Judge DiPentima will forward the language to the committee once it has been officially approved by the Justices of the Supreme Court.

The proposed draft of section 79-10 was discussed next. The official release date for slip opinions would be the date the decision was sent via electronic mail or the date notice is mailed by the clerk if electronic mail is not available. Judge DiPentima stated that in the commentary, it will state that slip opinions will be used in child protection appeals.

Judge DiPentima asked Attorney Begemann to update the committee with statistics tracking the measures implemented by the Supreme Court and Appellate Court.. Attorney Begemann mentioned that the time from Filing to Disposition includes all dispositions (withdrawals, denials of cert, etc.).

	Year	File to Ready	Ready to Argue	File to Disposition
Appellate Court	2008-2009	252	83	284
	2009-2010	159	60	183
Supreme Court	2008-2009	380	64	147
	2009-2010	180	62	56

The proposed draft section 79-6 Briefs was the final section to be discussed. The current rules allow 45 days for the appellant's brief, 30 days for the appellee's brief, and 20 days for the appellant's reply brief for a total of 95 days. The attorney for the minor child has 10 days to file a brief or a position letter. The 10 day period falls during the appellant's reply brief period.

Judge Foley offered proposed standards from both the American Bar Association (ABA) and the National Council of Juvenile and Family Court Judges (NCJFCJ). The ABA briefing schedule is 35 days (20 days for appellant; 15 days for appellee). The NCJFCJ proposed briefing schedule is 30 days (20 days for appellant; 10 days for appellee).

Judge Foley's proposal allows 35 days for the appellant to file their brief and 28 days for the appellee to file for a total of 63 days. There is no reply brief time period in his proposed schedule. An attorney for the minor child may file a brief or position letter during the appellee's briefing time. Judge Foley suggests that most appeals deal with a sufficiency of the evidence argument. If there are new or complex legal issues that would require more time to file a brief, the parties can make a motion for extension of time to file the brief.

Attorney Zivyon mentioned previously that the attorney for the minor child would file their brief or position letter during the period designated for whichever argument they were in agreement with.

Attorney Taylor interprets the proposed ABA and NCJFCJ briefing schedules in different. The ABA and NCJFCJ standards do not begin at the time of filing of the appeal, but rather from the date that the transcripts are received. The ABA and NCJFCJ allow for 40 days and 50 days respectively for the transcripts to be received. Attorney Taylor is concerned that the quality of the briefs may decline if the time to file briefs is too constricted. Inferior briefs can result in additional delay for the Supreme and Appellate Court to decide a case.

Attorney Signorelli proposed 40 days as a compromise.

Judge DiPentima asked the committee if there is anything about the timing of the briefs that is important to distinguish child protection appeals from other cases. While an argument was made that a party can file a motion for extension of time to file a brief, exceptional cases requiring additional time are not always readily discernable.

Attorney Signorelli agreed with Judge Foley in reducing children's time to permanency but expressed concerns that the narrow time frames may minimize the importance of child protection issues.

Attorney Hartan was concerned with the possibility of more motions for extension of time being filed if the briefing schedule is too constricted and also with putting the Court in the position of having to decide whether to dismiss an appeal if briefs are not filed timely which may increase the number of petitions for cert.

Attorney Zivyon stated that most appeals could follow a shortened briefing schedule. Attorney Zivyon proposed some type of screening mechanism to root out frivolous appeals. Attorney Zivyon proposed making appeals "ready" after the receipt of the appellee's brief. This would allow a reply brief to be filed but without delaying the assignment of the appeal.

Judge Foley proposed increasing the number of days for appellant's brief to 40 days and increasing the number of days to appellee's brief to 30 days. Attorney Taylor agreed with the new proposal.

The new proposal is as follows:

40 days for appellant's brief

30 days for appellee's brief

Attorney for minor child may file a brief or position letter during the appellee's 30-day period.

The appeal will be ready to assign after the receipt of the appellee's brief

A reply brief may be filed within 10 days of the filing of the appellee's brief.

Judge Foley made a motion to accept the proposal. Attorney Zivyon seconded the motion. All members voted to accept the proposal.

5. The next meeting is scheduled for May 24, 2011 at 3:00 PM at 75 Elm Street, Hartford.

6. The meeting adjourned at 3:30 PM.