

On Monday, November 23, 2015, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 2:29 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. JON M. ALANDER
HON. MARSHALL K. BERGER, JR.
HON. HENRY S. COHN
HON. ROBERT L. GENUARIO
HON. MARY E. SOMMER
HON. ROBERT E. YOUNG

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorneys Denise K. Poncini and Lori A. Petruzzelli of the Judicial Branch's Legal Services Unit. The Honorable William H. Bright, Jr. and the Honorable Robin L. Wilson were not in attendance at this meeting.

1. The Committee unanimously approved the minutes of the meeting held on October 19, 2015, as corrected.

2. The Committee considered a proposal by Attorneys Frederick Ury, Louis Pepe and Lawrence Morizio to implement Minimum Continuing Legal Education (MCLE) (draft dated November 11, 2015), and MCLE FAQs (draft dated October 30, 2015); a request for an extension of time by the Connecticut Bar Association (CBA) to present its position regarding the MCLE proposal; and separate comments from Attorney Michael H. Agranoff and Attorney Diane Duhaime regarding the MCLE proposal.

After discussion, the Committee decided to table these matters to its December meeting. Additionally, the Committee asked Counsel to clarify with Attorney Ury whether there is a substantive requirement in the MCLE proposal that an attorney complete the CLE and then certify that they did it. The Committee also requested that Counsel ask Attorney Ury to redraft the portion of the proposal concerning video and audio recordings to generalize it to make that portion of the proposal less susceptible to the passage of time and the advance of technology. Finally, the Committee requested

of Legal Services research on exemptions from MCLE afforded to individuals in other states.

6. The Committee considered a response from Judge Devlin regarding a proposal by the New Britain State's Attorney's Office to amend Practice Book Section 43-29.

After discussion, the Committee unanimously voted to submit to public hearing the amendment to Practice Book Section 43-29, as set forth in Appendix A attached to these minutes.

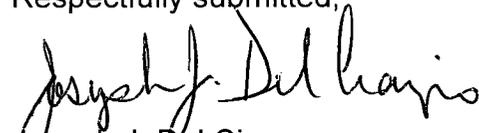
7. The Committee considered a proposal by Judge Conway to amend Practice Book Sections 35a-14 and 35a-19.

After discussion, the Committee unanimously voted to submit to public hearing the amendment to Practice Book Sections 35a-14 and 35a-19, as set forth in Appendix B attached to these minutes.

8. The Committee considered a proposal on behalf of Judge Carroll to amend Practice Book Section 3-9 concerning the timing of the withdrawal of an appearance for which an in lieu of appearance has been filed.

After discussion, the Committee decided to table the matter to its December meeting.

Respectfully submitted,


Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (112315)

Sec. 43-29. Revocation of Probation

In cases where the revocation of probation is based upon a conviction for a new offense and the defendant is before the court or is being held in custody pursuant to that conviction, the revocation proceeding may be initiated by a motion to the court by a probation officer and a copy thereof shall be delivered personally to the defendant. All other proceedings for revocation of probation shall be initiated by an arrest warrant supported by an affidavit or by testimony under oath showing probable cause to believe that the defendant has violated any of the conditions of the defendant's probation or his or her conditional discharge or by a written notice to appear to answer to the charge of such violation, which notice, signed by a judge of the superior court, shall be personally served upon the defendant by a probation officer and contain a statement of the alleged violation. All proceedings thereafter shall be in accordance with the provisions of Sections 3-6, 3-9 and 37- 1 through 38-23. At the revocation hearing, the prosecuting authority and the defendant may offer evidence and cross-examine witnesses. If the defendant admits the violation or the judicial authority finds from the evidence that the defendant committed the violation, the judicial authority may make any disposition authorized by law. The filing of a motion to revoke probation, issuance of an arrest warrant or service of a notice to appear, [under this section] shall interrupt the period of the sentence as of the date of the filing of the motion, signing of the arrest warrant by the judicial authority or service of the notice to appear, until a final determination as to the revocation has been made by the judicial authority.

COMMENTARY: The changes to this section bring it into conformance with General Statutes § 53a-31 (b).

Appendix B (112315)

Sec. 35a-14. Motions for Review of Permanency Plan

(a) Motions for review of the permanency plan shall be filed nine months after the placement of the child or youth in the custody of the commissioner of the department of children and families pursuant to a voluntary placement agreement, or removal of a child or youth pursuant to General Statutes § 17a-101g or an order of a court of competent jurisdiction, whichever is earlier. At the date custody is vested by order of a court of competent jurisdiction, or if no order of temporary custody is issued, at the date when commitment is ordered, the judicial authority shall set a date by which the subsequent motion for review of the permanency plan shall be filed. The commissioner of the department of children and families shall propose a permanency plan that conforms to the statutory requirements and shall provide a social study to support said plan. Nothing in this section shall preclude any party from filing a motion for revocation of commitment separate from a motion for review of permanency plan pursuant to General Statutes § 46b-129 (m) and subject to Section 35a-14A.

(b) At the time of the filing of a motion for review of permanency plan pursuant to subsection (a), the commissioner of the department of children and families shall also request a finding that it has made reasonable efforts to achieve the goal of the existing plan. The social study filed pursuant to subsection (a) shall include information indicating what efforts the commissioner has taken to achieve the goal of the existing plan.

(c) Once a motion for review of the permanency plan and requested findings regarding efforts to achieve the goal of the existing plan have been filed, the clerk of the court shall set a hearing not later than ninety days thereafter. The judicial authority shall provide notice to the child or youth, and the parent or guardian of such child or youth and any other party found entitled to such notice of the time and place of the court hearing on any such motion not less than fourteen days prior to such hearing. Any party who is in opposition to any such motion shall file a written objection and state with specificity the reasons therefor within thirty days after the filing of the commissioner of the department of children and families' motion for review of permanency plan and the objection shall be considered at the hearing. The judicial authority shall hold an

evidentiary hearing in connection with any contested motion for review of the permanency plan. If there is no objection or motion for revocation filed, then the motion may be granted by the judicial authority at the date of said hearing.

(d) Whether to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made are dispositional questions, based on the prior adjudication, and the judicial authority shall determine whether it is in the best interests of the child or youth to approve the permanency plan and to find that reasonable efforts to achieve the goal of the existing plan have been made upon a fair preponderance of the evidence. The commissioner of the department of children and families shall have the burden of proving that the proposed permanency plan is in the best interests of the child or youth and that it has made reasonable efforts to achieve the goal of the existing plan.

(e) At each hearing on a motion for review of permanency plan, the judicial authority shall (1) ask the child or youth about his or her desired permanency outcome, or if the child or youth is unavailable to appear at such hearing require the attorney for the child or youth to consult with the child or youth regarding the child's or youth's desired permanency outcome and report the same to the court, (2) review the status of the child[,] or youth, (3) review the progress being made to implement the permanency plan, (4) determine a timetable for attaining the permanency plan, (5) determine the services to be provided to the parent if the court approves a permanency plan of reunification and the timetable for such services, and (6) determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the goal of the existing permanency plan. The judicial authority shall also determine whether the proposed goal of the permanency plan as set forth in General Statutes § 46b-129 (k) (2) is in the best interests of the child or youth by a fair preponderance of the evidence, taking into consideration the child's or youth's need for permanency. The child's or youth's health and safety shall be of paramount concern in formulating such plan. If a permanency plan is not approved by the judicial authority, it shall order the filing of a revised plan and set a hearing to review said revised plan within sixty days.

(f) As long as a child or youth remains in the custody of the commissioner of the department of children and families, the commissioner shall file a motion for review of permanency plan and for a finding regarding reasonable efforts to achieve the goal of the existing plan nine months after the prior permanency plan hearing. No later than twelve months after the prior permanency plan hearing, the judicial authority shall hold a subsequent permanency review hearing in accordance with this section.

(g) Whenever an approved permanency plan needs revision, the commissioner of the department of children and families shall file a motion for review of the revised permanency plan. The commissioner shall not be precluded from initiating a proceeding in the best interests of the child or youth considering the needs for safety and permanency.

(h) Where a petition for termination of parental rights is granted, the guardian or statutory parent of the child or youth shall report to the judicial authority not later than thirty days after the date the judgment is entered on a permanency plan and on the status of the child or youth. At least every three months thereafter, such guardian or statutory parent shall make a report to the judicial authority on the implementation of the plan, or earlier if the plan changes before the elapse of three months. The judicial authority may convene a hearing upon the filing of a report and shall convene and conduct a permanency hearing for the purpose of reviewing the permanency plan for the child no more than twelve months from the date judgment is entered or from the date of the last permanency hearing held in accordance with General Statutes § 46b-129 (k), whichever is earlier, and at least once a year thereafter while the child or youth remains in the custody of the commissioner of the department of children and families. At each court hearing, the judicial authority shall make factual findings whether or not reasonable efforts to achieve the permanency plan or promote adoption have been made.

COMMENTARY: The proposed revisions are consistent with Public Act 15-199, Section 3 which amended Gen. Stat. Sec. 46b-129(k).

Sec. 35a-19. Transfer from Probate Court of Petitions for Removal of Parent as Guardian or Termination of Parental Rights

(a) When a contested application for removal of parent as guardian or petition for termination of parental rights or application to commit a child or youth to a hospital for the mentally ill has been transferred from the court of probate to the superior court, the superior court clerk shall transmit to the probate court from which the transfer was made a copy of any orders or decrees thereafter rendered, including orders regarding reinstatement pursuant to General Statutes § 45a-611 and visitation pursuant to General Statutes § 45a-612, and a copy of any appeal of a superior court decision in the matter.

(b) The date of receipt by the superior court of a transferred petition shall be the filing date for determining initial hearing dates in the superior court. The date of receipt by the superior court of any court of probate issued ex parte order of temporary custody not heard by that court shall be the issuance date in the superior court.

(c) [Any appearance filed for any party in the court of probate shall continue in the superior court until a motion to withdraw is filed by counsel and granted by the court of probate or the superior court or another counsel files an “in lieu of” appearance on behalf of the party. Counsel previously appointed by the court of probate for indigent parties or for the minor child(ren) and paid by probate court administration who remain on the case in superior court shall be paid by the Public Defender Services Commission at the rate of pay established by the commission. If a motion to withdraw is filed and granted and the party represented is indigent or is the child subject to the proceedings, new counsel shall be assigned and paid by the Public Defender Services Commission.] Any appearance filed for any party in the Probate Court shall continue in the superior court for juvenile matters unless (1) a motion to withdraw is filed in the Probate Court within five days of the filing of the motion to transfer, and the motion to withdraw is granted by the Probate Court, (2) a motion to withdraw is filed by such party’s counsel and granted by the superior court for juvenile matters, or (3) another counsel files an “in lieu of” appearance on behalf of the party. If the party represented is indigent or is the child subject to the proceedings, new counsel shall be assigned from the list of Public Defender Services assigned counsel and shall be paid by the Public Defender Services

Commission. The superior court for juvenile matters may request that the Division of Public Defender Services contract with probate counsel for representation if continued representation would be in the best interest of the client. Counsel for indigent parties or minor children appointed by the Probate Court who remain on the case in superior court for juvenile matters shall be paid by the Public Defender Services Commission according to its policies at the rate of pay established by the commission.

(d) (1) The superior court clerk shall notify appearing parties in applications for removal of guardian by mail of the date of the initial hearing which shall be held not more than thirty days from the date of receipt of the transferred application. Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for removal of guardian and an advisement of rights notice to be served on any nonappearing party or any party not served within the last twelve months with an accompanying order of notice and summons to appear at an initial hearing.

(2) Not less than ten days before the date of the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for termination of parental rights and an advisement of rights notice to be served on all parties, regardless of prior service, with an accompanying order of notice and summons to appear at an initial hearing which shall be held not more than thirty days from the date of receipt of the petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(3) The superior court clerk shall mail notice of the initial hearing date for all transferred petitions to all counsel of record and to the commissioner of the department of children and families or to any other agency which has been ordered by the probate court to conduct an investigation pursuant to General Statutes § 45a-619. The commissioner of the department of children and families or any other investigating agency will be notified of the need to have a representative present at the initial hearing.

COMMENTARY: The proposed revision is consistent with Section 20 of Public Act 15-199.