

RULES OF APPELLATE PROCEDURE

NOTICE

Notice is hereby given that the following amendments to the Rules of Appellate Procedure were adopted to take effect February 1, 2012. The adoption of Chapter 79a and the rules contained therein were approved by the Appellate Court on September 14, 2011, and by the Supreme Court on November 17, 2011. The courts have waived the provision of Section 86-1 requiring publication of rules sixty days prior to their effective date.

Attest:

Michèle T. Angers
Chief Clerk Appellate

INTRODUCTION

Contained herein are amendments to the Rules of Appellate Procedure. These amendments are indicated by brackets for deletions and capital letters for added language. The designation “NEW” is printed with the title of each new rule.

CHAPTER AND SECTION HEADINGS OF THE RULES

RULES OF APPELLATE PROCEDURE

CHAPTER 79

APPEALS IN JUVENILE MATTERS [REPEALED]

- Sec.
79-1. Time to Take; Form; Filing; Costs [Repealed]
79-2. Clerk’s Duties [Repealed]
79-3. Inspection of Records [Repealed]
79-4. Hearings; Confidentiality [Repealed]
79-5. Briefs [Repealed]

CHAPTER 79a

APPEALS IN CHILD PROTECTION MATTERS (NEW)

- Sec.
79a-1. CHILD PROTECTION APPEALS DEFINED (NEW)
79a-2. TIME TO APPEAL (NEW)
79a-3. FILING OF THE APPEAL (NEW)
79a-4. WAIVER OF FEES, COSTS AND SECURITY (NEW)
79a-5. ORDERING TRANSCRIPTS (NEW)
79a-6. FORMAT AND TIME FOR FILING BRIEFS (NEW)
79a-7. MOTIONS FOR EXTENSION OF TIME (NEW)
79a-8. DOCKETING CHILD PROTECTION APPEALS FOR ASSIGNMENT
(NEW)
79a-9. ORAL ARGUMENT (NEW)

- 79a-10. SUBMISSION WITHOUT ORAL ARGUMENT ON REQUEST OF PARTIES (NEW)
- 79a-11. OFFICIAL RELEASE DATE (NEW)
- 79a-12. INSPECTION OF RECORDS (NEW)
- 79a-13. HEARINGS; CONFIDENTIALITY (NEW)
- 79a-14. MOTIONS FILED WITH THE APPELLATE CLERK (NEW)
- 79a-15. APPLICABILITY OF RULES (NEW)

AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE
CHAPTER 79

APPEALS IN JUVENILE MATTERS [REPEALED]

Sec. 79-1. Time to Take; Form; Filing; Costs [Repealed]

[Appeals from judgments of the superior court in juvenile matters shall be taken within twenty days from the issuance of notice of the rendition of the judgment from which the appeal is taken.

The appeal shall be filed with the clerk in charge of juvenile matters with sufficient copies so that the clerk may distribute copies as required by Section 79-2.

An appellant who is indigent may make written application to the court before which the juvenile matter was heard for waiver of fees as provided in Section 63-6 or 63-7.]

Sec. 79-2. Clerk's Duties [Repealed]

[In addition to the clerk's duties as specified in Section 63-3, the clerk of the superior court in charge of juvenile matters shall also send a copy of the endorsed appeal form and the docket sheet to the commissioner of children and families, to the petitioner upon whose application the proceedings in the superior court were instituted, unless such party is the appellant, to any person or agency having custody of any child who is a subject of the proceeding, and to all other interested persons; and if the addresses of any such persons do not appear of record, such juvenile clerk shall call the matter to the attention of a judge of the superior court who shall make such an order of notice as such judge deems advisable.]

COMMENTARY: The substance of this rule has been transferred to Chapter 79a as subsection (d) of Section 79a-3.

Sec. 79-3. Inspection of Records [Repealed]

[The records and papers of any juvenile matter shall be open for inspection only to counsel of record and to others having a proper interest therein only upon order of the court. The name of the child or youth involved in any appeal from a juvenile matter shall not appear on the record of the appeal.]

COMMENTARY: This rule has been transferred to Chapter 79a as Section 79a-12.

Sec. 79-4. Hearings; Confidentiality [Repealed]

[(a) For the purpose of maintaining confidentiality, upon the hearing of an appeal from a juvenile matter, the court may exclude any person from the court whose presence is unnecessary.

(b) All proceedings shall be conducted in a manner that will preserve the anonymity of the child or youth.]

COMMENTARY: This rule has been transferred to Chapter 79a as Section 79a-13.

Sec. 79-5. Briefs [Repealed]

[Briefing in juvenile matters shall be in accordance with the general rules for briefing appeals, except that a brief or statement in accordance with Section 67-13

shall be filed by counsel for the minor child and/or counsel for the guardian ad litem within ten days of the filing of the appellee's brief.]

(NEW) CHAPTER 79a

APPEALS IN CHILD PROTECTION MATTERS

(NEW) Sec. 79a-1. Child Protection Appeals Defined

Child protection appeals in juvenile matters include all appeals from judgments in all proceedings concerning uncared for, neglected or dependent children and youth 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.

COMMENTARY: The construction, interpretation and application of all the practice book rules and statutes as they relate to child protection appeals shall favor the prompt assignment and disposition of the case consistent with due process to the end that the safe and permanent placement of children shall obtain without undue delay. See General Statutes §§ 46b-121 (a) (1), 46b-142 (d), 46b-129 (b) and Section 79a-9. Appeals from orders of temporary custody are included within this section. See *In re Shamika F.*, 256 Conn. 383, 773 A.2d 347 (2001).

(NEW) Sec. 79a-2. Time to Appeal

(a) General Provisions

Unless a different period is provided by statute, appeals from judgments of the superior court in child protection matters shall be taken within twenty days from the issuance of notice of the rendition of the decision or judgment from which the appeal is taken or within twenty days from the granting of any extension to appeal pursuant to Section 66-1 (a).

(b) When appeal period begins

If notice of the judgment or decision is given in open court, the appeal period shall begin on that day. If notice of the judgment or decision is given only by mail, the appeal period shall begin on the day that notice of the judgment or decision is mailed to counsel by the clerk for juvenile matters. The failure to give notice of judgment to a nonappearing party shall not affect the running of the appeal period.

(c) How a new appeal period is created

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 for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion. Such motions include, but are not limited to, motions that seek: the opening or setting aside of the judgment; a new trial; reargument of the judgment or decision; or any alteration of the terms of the judgment. Motions that do not give rise to a new appeal period include those that seek: clarification or articulation, as opposed to alteration, of the terms of the judgment or decision; a written or transcribed statement of the trial court's decision; or reargument or reconsideration of a motion listed in this paragraph.

If, within the appeal period, any application is filed, pursuant to Section 79a-4, seeking waiver of fees, costs and security or appointment of counsel, a new twenty day appeal period or statutory period for filing the appeal is not created. If a party files, pursuant to Section 66-6, a motion for review of the denial of any such application, a new appeal period shall begin on the day that notice of the ruling is given on the motion for review.

(d) What may be appealed during new appeal period

If a new appeal period is created under Section 79a-2 (c), the new appeal period may be used for appealing the original judgment or decision and/or for appealing

any order that gave rise to the new appeal period. Such period may also be used for amending an existing appeal pursuant to Section 61-9 to challenge the ruling that gave rise to the new appeal period. Rulings on applications for waiver of fees, costs and security or motions for appointment of counsel may not be appealed during the new appeal period but may be challenged by motion for review in accordance with Section 66-6.

(e) Limitation of time to appeal

Unless a new appeal period is created pursuant to Section 79a-2 (c), the time to take a child protection appeal shall not be extended past forty days (the original twenty days plus one twenty day extension for appellate review) from the date of issuance of notice of the rendition of the judgment or decision.

(NEW) Sec. 79a-3. Filing of the Appeal

(a) General Provisions

If counsel of record files an appeal with the clerk for juvenile matters, counsel of record shall then file with the appellate clerk two copies of the endorsed appeal form, accompanied by those papers required by Section 63-4, within ten days of the filing of the original appeal form. All filings shall contain a certification in accordance with Section 66-3 that a copy has been served on all counsel or self-represented parties of record.

(b) Appeal by indigent party

If a trial attorney who has provided representation to an indigent party through the Division of Public Defender Services declines to pursue an appeal and the indigent party expressly wishes to appeal, the trial attorney shall within twenty days of the decision or judgment simultaneously file with the court before which the matter was heard a motion for an additional twenty day extension of time to appeal, a sworn application signed by the indigent party for appointment of an appellate review attorney and a waiver of fees, costs and expenses, including the cost of an expedited transcript, and shall immediately request an expedited transcript from the court reporter in accordance with Section 79a-5, the cost of which shall be paid for by the Division of Public Defender Services.

Any party who is indigent who wishes to appeal and was not provided with representation by the Division of Public Defender Services during the proceeding which resulted in the decision or judgment from which an appeal is being sought shall, within twenty days of the decision or judgment, simultaneously file with the court before which the matter was heard a motion for an additional twenty day extension of time to appeal, a sworn application signed by the indigent party for appointment of an appellate review attorney and a waiver of fees, costs, and expenses, including the cost of an expedited transcript. The indigent party shall immediately request an expedited transcript from the court reporter in accordance with Section 79a-5, the cost of which shall be paid for by the Division of Public Defender Services

(c) Review by the Division of Public Defender Services

(1) If the appellate review attorney determines that there is merit to an appeal, that attorney shall file the appeal in accordance with Section 79a-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 Division of Public Defender Services 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 may file an appearance to represent the party on appeal at the party's own expense. A copy of the letter shall be sent to the clerk for juvenile matters forthwith.

(d) Duties of clerk for juvenile matters for cases on appeal

At the time of the filing of the appeal, the clerk for juvenile matters shall endorse the appeal form and return a copy of the endorsed appeal form to the filing party, send a copy of the endorsed appeal form and the case information form to the commissioner of children and families, to the petitioner upon whose application the proceedings in the superior court were instituted, unless such party is the appellant, to any person or agency having custody of any child who is a subject of the proceeding, the Division of Public Defender Services, the appellate clerk and to all other interested persons; and if the addresses of any such persons do not appear of record, such juvenile clerk shall call the matter to the attention of a judge of the superior court who shall make such an order of notice as such judge deems advisable.

COMMENTARY: The substance of subsection (d) of this rule has been transferred from Section 79-2.

(NEW) Sec. 79a-4. Waiver of Fees, Costs and Security

(a) Any written application to the court for appointment of an appellate review attorney or the waiver of fees, costs and expenses must be personally signed by the indigent party under oath and include a financial affidavit reciting facts concerning the applicant's financial status. The judicial authority shall act without a hearing on the application. If the court is satisfied that the applicant is indigent and has a statutory right to the appointment of an appellate review attorney or a statutory right to appeal without payment of fees, costs and expenses, the court may without a hearing: (1) waive payment by the applicant of fees specified by statute and of taxable costs, and (2) order that the necessary expenses of reviewing or prosecuting the appeal be paid by the Division of Public Defender Services in accordance with Section 79a-3 (c). If the court is not satisfied that the applicant is indigent and has a statutory right to the appointment of an appellate review attorney or a statutory right to appeal without payment of fees, costs and expenses, then an immediate hearing shall be scheduled for the application. If an application is untimely filed, the court may deny the application without hearing. 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 the application for the appointment of an appellate review attorney or waiver of fees, costs and expenses will not extend the appeal period. A denial of the application may be addressed solely by motion for review under Section 66-6. See Section 79a-2 (c).

(NEW) Sec. 79a-5. Ordering Transcripts

Transcripts in child protection appeals and in cases reviewed by the Division of Public Defender Services shall be ordered expedited and delivered to the ordering party no later than the close of the fifth business day following the date the order is placed.

(NEW) Sec. 79a-6. Format and Time for Filing Briefs

Briefs shall be prepared and submitted in accordance with Chapter 67 of these rules except that the time for filing briefs shall be strictly observed and abbreviated as set forth below.

(a) Except as otherwise ordered, the appellant's brief shall be filed within forty days after the delivery of the transcript ordered by the appellant. In cases where no transcript is required or the transcript has been received by the appellant prior to the filing of the appeal, the appellant's brief shall be filed within forty days of the filing of the appeal.

(b) Except as otherwise ordered, the brief of the appellee shall be filed within thirty days after the filing of the appellant's brief or the delivery date of the portions of the transcript ordered only by that appellee, whichever is later.

(c) Counsel for the minor child and/or counsel for the guardian ad litem shall, within ten days of the filing of the appellee's brief, file either: (1) a brief, (2) a statement adopting the brief of either the appellant or an appellee, or (3) a detailed statement that the factual or legal issues on appeal do not implicate the child's interests.

(d) The appellant may file a reply brief within ten days of the filing of the appellee's brief.

(e) Except as otherwise ordered, the case shall be deemed ready for assignment by the court after the filing of the appellee's brief.

(f) The unexcused failure to file briefs in accordance with this schedule may result in a dismissal of the appeal pursuant to Section 85-1, a refusal of the court to accept the late brief and/or an assignment of the case without the delinquent brief.

(NEW) Sec. 79a-7. Motions for Extension of Time

Motions for extension of time filed in the appellate court shall be filed in accordance with Section 66-1 and, if filed, shall be presented to a judge of the appellate court for determination. Such motions may be granted only for good cause shown.

COMMENTARY: This section applies to motions for extension of time filed in appeals pending in the appellate court only. This section does not apply to motions for extension of time filed with the supreme court. See Section 66-1 (c) (2).

(NEW) Sec. 79a-8. Docketing Child Protection Appeals for Assignment

The supreme court and appellate court may assign child protection matters without the case appearing on the printed docket. See Sections 69-1 and 69-2.

Notwithstanding the provisions of Section 69-3, child protection appeals shall ordinarily take precedence for assignment for oral argument.

(NEW) Sec. 79a-9. Oral Argument

(a) Oral argument will be allowed as of right except as provided in subsection (b) of this rule.

(b) In child protection appeals as defined by Section 79a-1 where: (1) the dispositive issue or set of issues has been recently authoritatively decided; or (2) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument, notice will be sent to counsel of record that the case will be decided on the briefs and record only. This notice will be sent after the record and all briefs have been filed. Any party may request argument by letter addressed to the appellate clerk stating briefly the reasons why oral argument is appropriate and shall do so within seven days of the issuance of the court's notice. After receipt and consideration of such a request, the court will either assign the case for oral argument or assign the case for disposition without oral argument, as it deems appropriate.

(c) In matters involving parties who are incarcerated and self-represented, oral argument may be conducted by videoconference upon direction of the court in its discretion.

COMMENTARY: Subsection (c) provides that matters involving self-represented, incarcerated parties may be calendared, upon direction of the court, for a hearing by videoconference. It is anticipated that this procedure will be used only when necessary, considering the circumstances of the individual case, and not in every case involving self-represented, incarcerated parties.

(NEW) Sec. 79a-10. Submission without Oral Argument on Request of Parties

With the permission of the court, counsel of record may, before or after a case has been assigned for a hearing, submit the case for decision on the record and briefs only, without oral argument. No request for submission without oral argument

will be granted unless the requesting party certifies that all other parties agree to waive oral argument. This rule applies only to counsel of record who have filed a brief or joined in the brief of another party.

COMMENTARY: This amendment provides that requests for disposition without oral argument may be made before *or* after a case has been assigned for a hearing. All parties are required to consent to such a request. In addition, the amendment clarifies that only those who have filed a brief or joined in another party’s brief may request waiver of oral argument. The latter change reflects the provisions of Sections 67-2 (l) and 70-4, which bar a party who has not filed a brief or joined in the brief of another party from participating in oral argument. It should be noted that “counsel of record,” as defined in Section 60-4, includes “all parties appearing pro se.”

(NEW) Sec. 79a-11. Official Release Date

A judgment in child protection appeals shall be deemed to have been rendered on the date an opinion or memorandum decision appears in the Connecticut Law Journal; except that if an opinion or memorandum decision is issued by slip opinion, the official release date is the date indicated in the slip opinion, and the parties shall be notified and sent the opinion or memorandum decision by the reporter of judicial decisions via electronic mail. If any of the parties who participated in the appeal has not provided the reporter of judicial decisions with an electronic mail address, then the slip opinion or memorandum decision shall be mailed to the parties by the appellate clerk on the date indicated in the slip opinion.

If a judgment in a child protection appeal is given by oral announcement from the bench, then the judgment shall be deemed to have been rendered on the date the oral announcement is made.

The official release date of decisions upon motions, petitions and of orders of the court shall be the date the appellate clerk issues notice to the parties.

See Sections 71-1 and 71-4 and General Statutes §§ 51-213 and 51-215a.

COMMENTARY: Generally, opinions or memorandum decisions in child protection appeals will be issued by slip opinion via electronic mail to give the parties prompt notice of the disposition of the appeal. Decisions on motions, petitions and orders of the court will be mailed by the appellate clerk on the same day the order is given by the court.

(NEW) Sec. 79a-12. Inspection of Records

The records and papers of any juvenile matter shall be open for inspection only to counsel of record and to others having a proper interest therein only upon order of the court. The name of the child or youth involved in any appeal from a juvenile matter shall not appear on the record of the appeal

COMMENTARY: This rule has been transferred from Section 79-3.

(NEW) Sec. 79a-13. Hearings; Confidentiality

(a) For the purpose of maintaining confidentiality, upon the hearing of an appeal from a juvenile matter, the court may exclude any person from the court whose presence is unnecessary.

(b) All proceedings shall be conducted in a manner that will preserve the anonymity of the child or youth.

COMMENTARY: This rule has been transferred from Section 79-4.

(NEW) Sec. 79a-14. Motions Filed with the Appellate Clerk

All motions filed with the appellate clerk in child protection matters shall include a statement on the first page by the moving party as to whether the other parties consent or object to the motion.

(NEW) Sec. 79a-15. Applicability of Rules

The rules governing other appeals shall, so far as applicable, and to the extent they have not been modified by this chapter, be the rules for all proceedings in child protection appeals.
