

RULES OF APPELLATE PROCEDURE

NOTICE

Notice is hereby given that the following amendment to the Rules of Appellate Procedure was adopted to take effect October 1, 2013. The amendment to Section 61-11 was approved by the Appellate Court on July 16, 2013, and by the Supreme Court on July 11, 2013.

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 underlines for added language.

CHAPTER AND SECTION HEADINGS OF THE RULES

RULES OF APPELLATE PROCEDURE

**CHAPTER 61
REMEDY BY APPEAL**

Sec.
61-11. Stay of Execution in Noncriminal Cases

AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

**CHAPTER 61
REMEDY BY APPEAL**

Sec. 61-11. Stay of Execution in Noncriminal Cases

(a) Automatic stay of execution

Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to take an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the Connecticut supreme court), and Section 71-7 (petitions for certiorari by the United States supreme court).

(b) Matters in which no automatic stay is available under this rule

Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to chapter 2 of these rules, in juvenile matters brought pursuant to chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection.

Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the

filing of an appeal or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal is filed, any further stay shall be sought pursuant to Section 61-12.

For purposes of this rule, “administrative appeal” means an appeal taken from a final judgment of the trial court or the compensation review board rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals taken pursuant to the Uniform Administrative Procedure Act, “administrative appeal” includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals.

(c) Stays in Family Matters

Unless otherwise ordered, no automatic stay shall apply to orders of relief from physical abuse pursuant to General Statutes § 46b-15, to orders for exclusive possession of a residence pursuant to General Statutes §§ 46b-81 or 46b-83 or to orders of periodic alimony, support, custody or visitation in family matters brought pursuant to chapter 25 or to any later modification of such orders. The automatic orders set forth in Section 25-5 (b) (1), (2), (3), (5) and (7) shall remain in effect during any appeal period and, if an appeal is taken, until the final determination of the cause unless terminated, modified or amended further by order of a judicial authority upon motion of either party.

Any party may file a motion to terminate or impose a stay in matters covered by this subsection, either before or after judgment is rendered, based upon the existence or expectation of an appeal. Such a motion shall be filed in accordance with the procedures in subsection (e) of this rule or Section 61-12. The judge hearing such motion may terminate or impose a stay of any order, pending appeal, as appropriate, after considering (1) the needs and interests of the parties, their children and any other persons affected by such order; (2) the potential prejudice that may be caused to the parties, their children and any other persons affected, if a stay is entered, not entered or is terminated; (3) if the appeal is from a judgment of dissolution, the need to preserve, pending appeal, the mosaic of orders established in the judgment; (4) the need to preserve the rights of the party taking the appeal to obtain effective relief if the appeal is successful; (5) the effect, if any, of the automatic orders under Section 25-5 on any of the foregoing considerations; and (6) any other factors affecting the equities of the parties.

The judge who entered the order in a family matter from which an appeal lies may terminate any stay in that matter upon motion of a party as provided in this subsection or sua sponte, after considering the factors set forth in this subsection or if the judge is of the opinion that an extension of time to appeal is sought or the appeal is taken only for delay. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

(d) Termination of stay

In all cases not governed by subsection (c), termination of a stay may be sought in accordance with subsection (e) of this rule. If the judge who tried the case is of the opinion that (1) an extension to appeal is sought, or the appeal is taken, only for delay or (2) the due administration of justice so requires, the judge may at any time, upon motion or sua sponte, order that the stay be terminated. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

(e) Motions to terminate stay

A motion to terminate a stay of execution may be filed before judgment; if it is, it may be ruled upon when judgment is entered. If such a motion is filed before judgment, or after judgment but before an appeal, it shall be filed in triplicate with the clerk of the superior court. If it is filed after an appeal is filed, an original and

three copies shall be filed with the appellate clerk, who shall forward the motion to the judge who tried the case. That judge shall file any ruling thereon with the appellate clerk and with the clerk of the trial court where the matter was tried. If the judge who tried the case is unavailable, the motion shall be forwarded to the clerk of the court in the judicial district where the case was tried, who shall assign the motion for a hearing and decision to any judge of the superior court.

(f) Motions to request stay

Requests for a stay pending appeal where there is no automatic stay shall be governed by Section 61-12.

(For stays of execution in criminal cases, see Section 61-13; for stays in death penalty cases, see Section 61-15.)

(g) Strict Foreclosure—Motion Rendering Ineffective a Judgment of Strict Foreclosure

In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. Such affidavit shall recite the specific facts relied on in support of the moving party's claim of good cause. If, notwithstanding the submission of such an affidavit of good cause, the plaintiff contends that there is no good cause to stay the court's judgment of strict foreclosure pending resolution of the appeal, the plaintiff may seek termination of the automatic stay by filing a motion requesting such relief accompanied by an affidavit stating the basis for the plaintiff's claim. In the event such a motion to terminate stay is filed, it shall be set down for argument and the taking of evidence, if necessary, on the second short calendar next following the filing of the motion. There shall be no automatic appellate stay in the event that the court grants the motion to terminate the stay and, if necessary, sets new law dates. There shall be no automatic appellate stay pending a motion for review of an order terminating a stay under this subsection.

(h) Foreclosure by Sale—Motion Rendering Ineffective a Judgment of Foreclosure by Sale

In any action for foreclosure in which the owner of the equity has filed a motion to open or other similar motion, which motion was denied fewer than twenty days prior to the scheduled auction date, the auction shall proceed as scheduled notwithstanding the court's denial of the motion, but no motion for approval of the sale shall be filed until the expiration of the appeal period following the denial of the motion without an appeal having been filed. The trial court shall not vacate the automatic stay following its denial of the motion during such appeal period.

COMMENTARY—October, 2013: The addition of subsections (g) and (h) was intended to address the problem of the “perpetual motion machine” recognized in *First Connecticut Capital, LLC v. Homes of Westport, LLC*, 112 Conn. App. 750, 762, 966 A.2d 239 (2009), whereby a party could indefinitely delay conclusion of the foreclosure proceedings by filing repeated dilatory motions to open the foreclosure judgment.