Minutes of the Meeting
Rules Committee
November 21, 2011

On Monday, November 21, 2011, at 2:00 p.m. the Rules Committee met in the Supreme Court Courtroom from 2:00 p.m. to 3:53 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. BARBARA N. BELLIS
HON. WILLIAM M. BRIGHT, JR.
HON. JULIET L. CRAWFORD
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
HON. ELIOT D. PRESCOTT
HON. MICHAEL R. SHELDON
HON. CARL E. TAYLOR

Judges William M. Bright, Jr., and Maureen M. Keegan were not in attendance at this meeting.

Also in attendance were Carl E. Testo, Counsel to the Rules Committee, and Attorney Joseph Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the October 24, 2011, meeting.

2. At its October 24, 2011, meeting the Rules Committee approved the repeal of Section 1-11D concerning the Juvenile Access Pilot Program in light of P.A. 11-51 §§ 30 and 225. The Committee also decided that a rule implementing § 30 of the Public Act should be drafted, but that it should avoid the prior restraint issue created by the language of the Act. Judge Dyer agreed to discuss this matter with Judge Keller and to work with her in the drafting of an implementing rule.

At this meeting the Committee considered a proposed revision to Section 30a-6A to implement § 30 of P.A. 11-51.

The Committee agreed that, because the revision to Section 30a-6A would broaden its scope, the revised rule should be moved to Chapter 26 of the juvenile rules and that the title of that chapter should be changed to "General Provisions."

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Section 30a-6A as set forth in Appendix A attached hereto.

3. The Committee considered proposals by Attorney Joseph Del Ciampo to amend Sections 7-11, 25a-3, 33a-7 and 38-4 in light of the repeal of various statutes.

After discussion, the Committee unanimously voted to submit to public hearing the revisions to Sections 7-11, 25a-3, 33a-7 and 38-4 as set forth in Appendix B attached hereto.

4. The Committee considered a proposal by Judge Cara Eschuk to amend new Section 35a-22 (effective January 1, 2012) which permits the presence of a person to be by means of a interactive audiovisual device in certain juvenile proceedings.

After discussion, the Committee suggested further changes to the proposal and asked the undersigned to forward the changes to Judges Eschuk and Keller for comment.

5. At the invitation of the Rules Committee, Attorney Anne Dranginis, Chair of the Bar Examining Committee, attended the meeting to discuss the Bar Examining Committee's procedures concerning character and fitness and mental health issues of applicants. Attorneys Michael Whelton, a member of the committee, and Howard Emond, who provides legal and administrative support to the committee, attended the meeting with Attorney Dranginis.

During the discussion, Judge Sheldon stated that question 36 on the bar application is too broad. That question asks the following: "Within the past five years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous or behavioral disorder or condition as a defense, or in mitigation or explanation of your actions in the court of any administrative or judicial proceeding or investigation, or in any other inquiry or proceeding, or in any proposed termination by an educational institution, employer, government agency, professional organization or licensing authority?" Judge Sheldon suggested that the language "or in any other inquiry or proceeding" be deleted. Attorney Dranginis stated that she will raise this with the Bar Examining Committee.

Judge Sheldon also suggested that the Bar Examining Committee should not categorize bipolar together with bipolar with psychotic tendencies. Attorney Dranginis stated that she will also raise this with her committee.

6. The Committee considered a proposal submitted by Statewide Bar Counsel Michael Bowler on behalf of the Statewide Grievance Committee to amend Section 2-55 concerning attorney retirement.

Attorney Bowler attended the meeting at the Committee's invitation and answered the Committee's questions concerning the proposal.

After discussion, the Committee tabled the matter and asked Attorney Bowler to redraft his proposal and resubmit it.

7. The Committee considered a letter from Ms. Susie Lockwood concerning the procedures followed by the Bar Examining Committee in connection with her bar application.

After discussion, the Committee determined that the assistance she is seeking is not within the Rules Committee's purview and asked the undersigned to send her a letter advising her of this.

Respectfully submitted,

Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachments

APPENDIX A (112111)

Sec. [30a-6A. —]26-2 Persons in Attendance at Hearings

(a) Except as provided in subsection (b) of this section, Aany judge hearing a juvenile matter, may during such hearing, exclude from the courtroom in which such hearing is held any person whose presence is, in the court's opinion, not necessary, except that in delinquency proceedings, any victim shall not be excluded unless, after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise.

(b) Any judge hearing a juvenile matter, in which a child is alleged to be uncared for, neglected, abused or dependent or in which a child is the subject of a petition for termination of parental rights, may permit any person whom the court finds has a legitimate interest in the hearing or the work of the court to attend such hearing. Such person may include a party, foster parent, relative related to the child by blood or marriage, service provider or any person or representative of any agency, entity or association, including a representative of the news media. The court may, as a condition of participation, for the child's safety and protection and for good cause shown, prohibit any person or representative of any agency, entity or association, including a representative of the news media, who is present in court from further disclosing any information that would identify the child, the custodian or caretaker of the child or the members of the child's family involved in the hearing.

COMMENTARY: The above revisions are made so that the rule is consistent with § 30 of P.A. 11-51.

Because the above revision broadens the scope of the rule, it has been given a new number so that it will appear in Chapter 26 of the juvenile rules. The title of that chapter will be changed from "Definitions" to "General Provisions."

Sec. 7-11. —Judgments on the Merits—Stripping and Retention

(a) With the exception of actions which affect the title to land and actions which have been disposed of pursuant to Section 7-10, the files in civil, family and juvenile actions in which judgment has been rendered may be stripped and destroyed pursuant to the schedule set forth in subsection (d) below, except that requests relating to discovery, responses and objections thereto may be stripped after the expiration of the appeal period.

(b) When a file is to be stripped, all papers in the file shall be destroyed except:

(1) The complaint, including any amendment thereto, substituted complaint or amended complaint;

(2) All orders of notice, appearances and officers' returns;

(3) All military or other affidavits;

(4) Any cross complaint, third-party complaint, or amendment thereto;

(5) All responsive pleadings;

(6) Any memorandum of decision;

(7) The judgment file or notation of the entry of judgment, and all modifications of judgment;

(8) All executions issued and returned.

(c) Upon the expiration of the stripping date, or at any time if facilities are not available for local retention, the file in any action set forth in subsection (d) may be transferred to the records center or other proper designated storage area, where it shall be retained for the balance of the retention period. Files in actions concerning dissolution of marriage or civil union, legal separation, or annulment may, upon agreement with officials of the state library, be transferred to the state library at the expiration of their retention period.

(d) The following is a schedule which sets forth when a file may be stripped and the length of time the file shall be retained. The time periods indicated below shall run from the date judgment is rendered except receivership actions or actions for injunctive relief which shall run from the date of the termination of the receivership or injunction.

	Type of Case	*Stripping Date*	*Retention Date*
(1)	Administrative appeals		3 years
(2)	Contracts (where money damages are not awarded)	1 year	20 years
(3)	Eminent domain (except as provided in Section 7-12)		10 years
(4)	Family		
	-Dissolution of marriage or civil union, legal separation, annulment and change of name	5 years	75 years
	-Delinquency		Until subject is 25 years of age
	-Family with service needs		Until subject is 25 years of age
	-Termination of parental rights		Permanent
	-Neglect and uncared for		75 years
	-Emancipation of minor		5 years
	-Orders in relief from physical abuse (General Statutes § 46b-15)		5 years
	-Other		75 years
(5)	Family support magistrate matters		75 years
	-Uniform reciprocal enforcement of support (General Statutes §§ 46b-180 through 46b-211)		6 years after youngest child reaches majority age or after activity ceases, whichever is shorter, subject to federal law on filing an amended tax return

	-Uniform Interstate Family Support Act (General Statutes §§ 467b-212 through [46b-213v] 46b-213w)		6 years after youngest child reaches majority age or after activity ceases, whichever is shorter, subject to federal law on filing an amended tax return
(6)	Landlord/Tenant		
	-Summary process		3 years
	-Housing code enforcement (General Statutes § 47a-14h)		5 years
	-Contracts/Leases (where money damages are not awarded)	1 year	20 years
	-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
(7)	Miscellaneous		
	-Bar discipline		50 years
	-Money damages (except where a satisfaction of judgment has been filed)	1 year	26 years
	-Mandamus, habeas corpus, arbitration, petition for new trial, action for an accounting, interpleader		10 years
	-injunctive relief (where no other relief is requested)		5 years
(8)	Property (except as provided in Section 7-12)	5 years	26 years
(9)	Receivership		10 years
(10)	Small Claims		15 years

(11)	Torts (except as noted below)	1 year	26 years
	-Money damages if the judgment was rendered in an action to recover damages for personal injury caused by sexual assault where the party at fault was convicted under General Statutes § 53a-70 or § 53a-70a (except where a satisfaction of judgment has been filed)		Permanent
(12)	Wills and estates		10 years
(13)	Asset forfeiture (General Statutes § 54-36h)		10 years
(14)	Alcohol and drug commitment (General Statutes § 17a-685)		10 years
(15)	All other civil actions (except as provided in Section 7-12)		75 years

COMMENTARY: The change to this section corrects the statutory citation to the Uniform Interstate Family Support Act (UIFSA).

Sec. 25a-3. Withdrawal of Appearance; Duration of Appearance

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in place of the appearance of such attorney or party in accordance with Section 3-8.

(b) An attorney may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subsection shall state that such an appearance has been entered and that such party or parties are being represented by such other counsel at the time of the application. Such an application may be granted by the clerk as of course, if such an appearance by other counsel has been entered.

(c) All appearances of counsel shall be deemed to have been withdrawn 180 days after the entry of judgment in any action seeking a dissolution of marriage or civil union, annulment, or legal separation, provided no appeal shall have been taken. In the event of an appeal or the filing of a motion to open a judgment within such 180 days, all appearances of counsel shall be deemed to have been withdrawn after final judgment on such appeal or motion or within 180 days after the entry of the original judgment, whichever is later. Nothing herein shall preclude or prevent any attorney from filing a motion to withdraw with leave of the court during that period subsequent to the entry of judgment. In the absence of a specific withdrawal, counsel will continue of record for all postjudgment purposes until 180 days have elapsed from the entry of judgment or, in the event an appeal or a motion to open a judgment is filed within such 180 day period, until final judgment on that appeal or determination of that motion, whichever is later.

(d) Except as provided in subsections (a), (b) and (c), no attorney shall withdraw his or her appearance after it has been entered upon the record of the court without the leave of the court.

(e) [All appearances of the chief child protection attorney appointed pursuant to General Statutes § 46b-123c shall continue until a motion to withdraw has been granted.

(f)] All appearances entered on behalf of parties for matters involving Title IV-D child support matters shall be deemed to be for those matters only.

[(g)](f) All appearances entered on behalf of parties in the family division of the superior court shall not be deemed appearances for any matter involving a Title IV-D child support matter unless specifically so designated.

COMMENTARY: Subsection (e) has been deleted because General Statutes Section 46b-123c was repealed by Section 223 of Public Act 11-51, the position of the Chief Child Protection Attorney has been eliminated and the functions of that office have been transferred to the Chief Public Defender.

Sec. 33a-7. Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority

(a) At the preliminary hearing on the order of temporary custody or order to appear, or at the first hearing on a petition for neglect, uncared for, dependency, or termination of parental rights, the judicial authority shall:

(1) first determine whether the necessary parties are present and that the rules governing service on or notice to nonappearing parties, and notice to grandparents, foster parents, relative caregivers and pre-adoptive parents, as applicable, have been complied with, and should note these facts for the record, and may proceed with respect to the parties who (i) are present and have been properly served; (ii) are present and waive any defects in service; and (iii) are not present, but have been properly served. As to any party who has not been properly served, the judicial authority may continue the proceedings with respect to such party for a reasonable period of time for service to be made and confirmed;

(2) inform the respondents of the allegations contained in all petitions and applications that are the subject of the hearing;

(3) inform the respondents of their right to remain silent;

(4) ensure that an attorney, and where appropriate, a separate guardian ad litem, has been assigned to represent the child or youth by the chief public defender, in accordance with General Statutes § § [46b-123e,] 46b-129a (2), 46b-136, Public Act 11-51 and Section 32a-1 of these rules;

(5) advise the respondents of their right to counsel and their right to have counsel assigned if they are unable to afford representation, determine eligibility for state paid representation and notify the chief public defender to assign an attorney to represent any

respondent who is unable to afford representation, as determined by the judicial authority;

(6) advise the respondents of the right to a hearing on the petitions and applications, to be held not later than ten days after the date of the preliminary hearing if the hearing is pursuant to an ex parte order of temporary custody or an order to appear;

(7) notwithstanding any prior statements acknowledging responsibility, inquire of the custodial respondent in neglect, uncared for and dependency matters, and of all respondents in termination matters, whether the allegations of the petition are presently admitted or denied;

(8) make any interim orders, including visitation, that the judicial authority determines are in the best interests of the child or youth, and order specific steps the commissioner and the respondents shall take for the respondents to regain or to retain custody of the child or youth;

(9) take steps to determine the identity of the father of the child or youth, including, if necessary, inquiring of the mother of the child or youth, under oath, as to the identity and address of any person who might be the father of the child or youth and ordering genetic testing, if necessary and appropriate, and order service of the amended petition citing in the putative father and notice of the hearing date, if any, to be made upon him;

(10) if the person named as the putative father appears, and admits that he is the biological father, provide him and the mother with the notices which comply with General Statutes § 17b-27 and provide them with the opportunity to sign a paternity acknowledgment and affirmation on forms which comply with General Statutes § 17b-27, which documents shall be executed and filed in accordance with General Statutes § 46b-172 and a copy delivered to the clerk of the superior court for juvenile matters;

(11) in the event that the person named as a putative father appears and denies that he

is the biological father of the child or youth, advise him that he may have no further standing in any proceeding concerning the child or youth, and either order genetic testing to determine paternity or direct him to execute a written denial of paternity on a form promulgated by the office of the chief court administrator. Upon execution of such a form by the putative father, the judicial authority may remove him from the case and afford him no further standing in the case or in any subsequent proceeding regarding the child or youth until such time as paternity is established by formal acknowledgment or adjudication in a court of competent jurisdiction; and

(12) identify any person or persons related to the child or youth by blood or marriage residing in this state or out of state who might serve as licensed foster parents or temporary custodians, and order the commissioner of the department of children and families to investigate and determine the appropriateness of placement of the child or youth with such relative or relatives pursuant to General Statutes § 46b-129 (c) and provide a written report to the court no later than thirty days from the date of the preliminary hearing and notify all counsel of record or set a reasonable date for such a report if a relative lives outside the state.

(b) At the preliminary hearing on the order of temporary custody or order to appear, the judicial authority may provide parties an opportunity to present argument with regard to the sufficiency of the sworn statements.

(c) If any respondent fails, after proper service, to appear at the preliminary hearing, the judicial authority may enter or sustain an order of temporary custody.

(d) Upon request, or upon its own motion, the judicial authority shall schedule a hearing on the order for temporary custody or the order to appear to be held as soon as practicable but not later than ten days after the date of the preliminary hearing. Such hearing shall be held on

consecutive days except for compelling circumstances or at the request of the respondents.

(e) Subject to the requirements of Section 33a-7 (a) (6), upon motion of any party or on its own motion, the judicial authority may consolidate the hearing, on the order of temporary custody or order to appear with the adjudicatory phase of the trial on the underlying petition. At a consolidated order of temporary custody and neglect adjudication hearing, the judicial authority shall determine the outcome of the order of temporary custody based upon whether or not continued removal is necessary to ensure the child's or youth's safety, irrespective of its findings on whether there is sufficient evidence to support an adjudication of neglect or uncared for. Nothing in this subsection prohibits the judicial authority from proceeding to disposition of the underlying petition immediately after such consolidated hearing if the social study has been filed and the parties had previously agreed to sustain the order of temporary custody and waived the ten day hearing or the parties should reasonably be ready to proceed.

COMMENTARY: The reference to Section 46b-123e in subdivision (4) of subsection (a) has been deleted because it was repealed by Public Act 11-51. The appropriate new statutory reference to Public Act 11-51 has been added.

Sec. 38-4. —Release by Judicial Authority

(a) When any defendant is presented before a judicial authority, such authority shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient reasonably to assure the person's appearance in court and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, that the safety of any person will not be endangered:

(1) The defendant's execution of a written promise to appear without special conditions;

(2) The defendant's execution of a written promise to appear with nonfinancial conditions;

(3) The defendant's execution of a bond without surety in no greater amount than necessary;

(4) The defendant's deposit with the clerk of the court of an amount of cash equal to 10 percent of the amount of the surety bond set, pursuant to Section 38-8;

(5) The defendant's execution of a bond with surety in no greater amount than necessary;

(6) The defendant's execution of a cash bond and his or her deposit with the clerk of the court of cash in the amount of the bond set by the judicial authority in no greater amount than necessary. In addition to or in conjunction with any of the conditions of release enumerated in this subsection, the judicial authority may impose one or more nonfinancial conditions of release pursuant to subsection (d).

(b) The judicial authority may, in determining what conditions of release will reasonably assure the appearance of the defendant in court, consider factors (1) through (7) below, and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, the judicial authority may also consider factors (8) through (10) below:

(1) The nature and circumstances of the offense, including the weight of the evidence against the defendant;

(2) The defendant's record of previous convictions;

(3) The defendant's past record of appearance in court after being admitted to bail;

(4) The defendant's family ties;

(5) The defendant's employment record;

(6) The defendant's financial resources, character, and mental condition;

(7) The defendant's community ties;

(8) The defendant's history of violence;

(9) Whether the defendant has previously been convicted of similar offenses while released on bond; and

(10) The likelihood based upon the expressed intention of the defendant that he will commit another crime while released.

(c) In addition to or in conjunction with any of the conditions enumerated in subdivisions (1) to (6) of subsection (a), the judicial authority may, when it has reason to believe that the defendant is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program

of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such defendant.

(d) If the judicial authority determines that a nonfinancial condition of release should be imposed in addition to or in conjunction with any of the conditions enumerated in subdivisions (1) to (6) of subsection (a) of this section, the judicial authority shall order the pretrial release of the defendant subject to the least restrictive condition or combination of conditions that the judicial authority determines will reasonably assure the appearance of the defendant in court and, when the crimes charged or the facts and circumstances brought to the attention of the judicial authority suggest that the defendant may pose a risk to the physical safety of any person, that the safety of any person will not be endangered, which conditions may include an order that he or she do one or more of the following:

(1) Remain under the supervision of a designated person or organization;

(2) Comply with specified restrictions on his or her travel, association or place of abode;

(3) Not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant or a controlled substance;

(4) [Participate in the zero-tolerance drug supervision program established under General Statutes § 53a-39d;

(5)] Provide sureties of the peace pursuant to General Statutes § 54-56f under supervision of a designated bail commissioner;

[(6)] (5) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

[(7)] (6) Maintain employment or, if unemployed, actively seek employment;

[(8)] (7) Maintain or commence an educational program;

[(9)] (8) Be subject to electronic monitoring; or

[(10)] (9) Satisfy any other condition that is reasonably necessary to assure the appearance of the defendant in court and that the safety of any other person will not be endangered.

(e) The judicial authority shall state on the record its reasons for imposing any such nonfinancial condition.

(f) The judicial authority may require that the defendant subject to electronic monitoring pursuant to subsection (d) of this section pay directly to the electronic monitoring service provider a fee for the cost of such electronic monitoring services. If the judicial authority finds that the defendant subject to electronic monitoring is indigent and unable to pay the costs of electronic monitoring services, it shall waive such costs.

COMMENTARY: The revisions to this section are made because General Statutes § 53a-39d, which established the zero-tolerance drug supervision program as one of the possible non-financial conditions of release that could be required by the judicial authority, was repealed by Section 43 of Public Act 10-43.