

RULES OF APPELLATE PROCEDURE

NOTICE

Notice is hereby given that the following amendments to the Rules of Appellate Procedure were adopted to take effect January 1, 2013. The amendments to Section 61-11 were approved by the Appellate Court on May 23, 2012. The amendments to Section 61-12 were approved by the Appellate Court on May 29, 2012. The amendments to Sections 66-2 and 84-4 were approved by the Appellate Court on April 18, 2012. The amendments to Sections 61-11, 61-12, 66-2, and 84-4 were approved by the Supreme Court on July 26, 2012.

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.

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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. [In addition, no automatic stay shall apply to orders of relief from physical abuse pursuant to General Statutes § 46b-15 or to orders of periodic alimony, support, custody or visitation in domestic relations matters brought pursuant to chapter 25 or to any later modification of such orders.]

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.

[c] (D) Termination of stay

IN ALL CASES NOT GOVERNED BY SUBSECTION (C), [T]ermination of a stay may be sought in accordance with subsection [d] (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 [after a hearing], 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.

[d] (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.

[e] (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.)

COMMENTARY: The new subsection (c) sets forth a nonexclusive list of factors that should be considered by the court when deciding stay issues in family cases to address the unique concerns of such matters. The list of factors is not intended to limit the court from considering other relevant factors, such as whether an appeal is taken solely for delay. The new subsection (c) also provides that there is no automatic stay of an order for exclusive possession of a residence. Although transfer of title to the

marital home in a dissolution action may be stayed by an appeal, the parties and any minor children should not be required to live under the same roof in the event of an appeal. Note that the trial judge in a family matter retains the ability to terminate stays sua sponte after a hearing. The last sentence of what is now designated as subsection (d) was added to provide greater clarity to the existing requirement that a judge must hold a hearing before terminating a stay whether the judge acts upon a motion of a party or sua sponte.

Sec. 61-12. Discretionary Stays

In noncriminal matters in which the automatic stay provisions of Section 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the superior court pending appeal shall be made to the judge who tried the case unless that judge is unavailable, in which case the motion may be made to any judge of the superior court. Such a motion may also be filed before judgment and may be ruled upon at the time judgment is rendered unless the court concludes that a further hearing or consideration of such motion is necessary. A temporary stay may be ordered sua sponte or on written or oral motion, ex parte or otherwise, pending the filing or consideration of a motion for stay pending appeal. The motion shall be considered on an expedited basis and the granting of a stay of an order for the payment of money may be conditional on the posting of suitable security.

In the absence of a motion filed under this section, the trial court may order, sua sponte, that proceedings to enforce or carry out the judgment or order be stayed until the time to take an appeal has expired or, if an appeal has been filed, until the final determination of the cause. A party may file a motion to terminate such a stay pursuant to Section 61-11.

IN DETERMINING WHETHER TO IMPOSE A STAY IN A FAMILY MATTER, THE COURT SHALL CONSIDER THE FACTORS SET FORTH IN SECTION 61-11 (C).

COMMENTARY: The amendment is intended to make clear that the same factors relevant to motions to terminate stays in family matters should be considered when deciding whether to impose a discretionary stay.

CHAPTER 66

MOTIONS AND OTHER PROCEDURES

Sec. 66-2. Motions, Petitions and Applications; Supporting Memoranda

(a) Motions, petitions and applications shall be specific. No motion, petition or application will be considered unless it clearly sets forth in separate paragraphs appropriately captioned: (1) a brief history of the case; (2) the specific facts upon which the moving party relies; and (3) the legal grounds upon which the moving party relies. A separate memorandum of law may but need not be filed. If the moving party intends to file a memorandum of law in support of the motion, petition or application, however, such memorandum shall be filed with the motion, petition or application. A party intending to oppose a motion, petition or application shall file a brief statement clearly setting forth in separate paragraphs appropriately captioned the factual and legal grounds for opposition within ten days after the filing of the motion, petition or application. If an opposing party chooses to file a memorandum of law in opposition to a motion, petition or application, that party shall do so within ten days after the filing of the motion, petition or application. Responses to memoranda in opposition are not permitted. Except as provided in subsection (e) below, no proposed order is required.

(b) Except with special permission of the appellate clerk, the motion, petition or application and memorandum of law taken together shall not exceed ten pages, and the memorandum of law in opposition thereto shall not exceed ten pages.

(c) Where counsel for the moving party certifies that all other parties to the appeal have consented to the granting of the motion, petition or application, the motion, petition or application may be submitted to the court immediately upon filing and may be acted upon without awaiting expiration of the time for filing opposition papers. Notice of such consent certification shall be indicated on the first page of the document.

(d) Motions which are not dispositive of the appeal may be ruled upon by one or more members of the court subject to review by a full panel upon a motion for reconsideration pursuant to Section 71-5.

(e) Motions that are directed to the trial court, such as motions to terminate stay pursuant to Section 61-11 or motions for rectification or articulation pursuant to Section 66-5, shall: (1) include both the trial court and the appellate court docket numbers in the caption of the case; (2) state in the first paragraph the name of the trial court judge, or panel of judges, who issued the order or orders to be reviewed; (3) include a proper order for the trial court [pursuant to] IF REQUIRED BY Section 11-1; and (4) comply with the requirements of Section 66-3. Such motions will be forwarded to the trial court by the appellate clerk.

CHAPTER 84

APPEALS TO SUPREME COURT BY CERTIFICATION FOR REVIEW

Sec. 84-4. Petition; Time to File; Where to File; Service; Fee

(a) A petition for certification shall be filed by the petitioner within twenty days of (1) the date the opinion is officially released as set forth in Section 71-4, or (2) the issuance of notice of any order or judgment finally determining a cause in the appellate court, whichever is earlier. If within this period a timely motion is filed which, if granted, would render the appellate court order or judgment ineffective, as, for example, a motion for reconsideration, or if within this period an application for waiver of fees is filed, then the twenty days shall run from the issuance of notice of the decision thereon.

Except in workers' compensation cases, the petitioner for certification shall file the original and one copy of the petition with, and pay a filing fee to, the clerk of the trial court except that no fee shall be required in cases where a waiver of fees, costs and expenses under Section 63-6 or 63-7 was previously granted. The fee may be paid to the clerk of any trial court in the state. The clerk shall endorse on the original petition the date and time of filing and the receipt, or waiver, of fees. The clerk shall return the original endorsed petition to the petitioner, who shall promptly send it, together with fifteen additional copies, to the appellate clerk. [The petitioner shall serve a copy upon every other party in the manner set forth in Section 62-7, and if the fee was paid at a location other than the original trial court, then the petitioner shall also serve a copy upon the clerk of the original trial court.] THE PETITIONER SHALL SERVE A COPY UPON EVERY OTHER PARTY IN THE MANNER SET FORTH IN SECTION 62-7. IF THE FEE WAS PAID AT A LOCATION OTHER THAN THE ORIGINAL TRIAL COURT, THEN THE PETITIONER SHALL ALSO ATTACH A SEPARATE CERTIFICATION INDICATING THAT A COPY HAS BEEN SERVED UPON THE CLERK OF THE ORIGINAL TRIAL COURT.

In workers' compensation cases, the petitioner shall file the original and fifteen copies with the appellate clerk. The petitioner shall serve a copy upon every other party in the manner set forth in Section 62-7, and upon the trial commissioner in a General Statutes § 31-290a appeal and upon the compensation review board in an appeal from that board. No fee is required in workers' compensation cases.

(b) Any other party aggrieved by the judgment of the appellate court may file a cross petition within ten days of the filing of the original petition. The filing of cross petitions, including the payment of the fee, service pursuant to Section 62-7, the form of the cross petition, and all subsequent proceedings shall be the same as though the cross petition were an original petition.

(c) The filing of a petition or cross petition by one party shall not be deemed to be a filing on behalf of any other party.
