Practice Book Revisions to the Rules of Appellate Procedure Being Considered by the Justices of the Supreme Court and Judges of the Appellate Court

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Including Commentaries to Proposals

June 9, 2020

NOTICE

Public Hearing on Practice Book Revisions to the Rules of Appellate Procedure Being Considered by the Justices of the Supreme Court and Judges of the Appellate Court

On June 29, 2020, at 10 a.m., a public hearing will be conducted pursuant to General Statutes § 51-14 (c) for the purpose of receiving comments concerning revisions to the Rules of Appellate Procedure, which are being considered by the Justices and Judges, as well as any proposed new rule or any change to an existing rule that any member of the public deems desirable. The revisions proposed by the Advisory Committee on Appellate Rules follow this notice and are posted on the Judicial Branch website at http://www.jud.ct.gov/pb.htm.

Because of the public health emergency and civil preparedness emergency declared by Governor Lamont on March 10, 2020, the public hearing will be conducted electronically using *Microsoft Teams* communication and collaboration platform. Individuals who would like to access the public hearing may do so by clicking here.

For every individual who wishes to access the public hearing, and for those who wish to speak at the public hearing, it is important that certain procedures be followed. All individuals who access the public hearing must at all times act in a professional and respectful manner. Any individual whose conduct is deemed by the co-chairs to be disruptive or inappropriate will be removed from the public hearing.

Individuals who would like to speak at the public hearing should access the hearing one-half hour before the hearing begins in order to

be recognized and queued to speak. Each speaker will be allowed a maximum of five minutes to offer their remarks. Anyone who believes that they may need to exceed the five minute limit or who does not wish to speak at the public hearing but wishes to offer comments on the proposed revisions may submit their comments to the Advisory Committee on Appellate Rules by e-mail at Jill.Begemann@connapp.jud.ct.gov.

Hon. Richard N. Palmer

Hon. Alexandra D. DiPentima

Co-Chairs, Advisory Committee on Appellate Rules

INTRODUCTION

The following are amendments to the Rules of Appellate Procedure that are being considered by the Justices of the Supreme Court and Judges of the Appellate Court. These amendments are indicated by brackets for deletions and underlined text for added language. This material should be used as a supplement to the Connecticut Practice Book until the 2021 edition of the Practice Book becomes available.

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CHAPTER 61 REMEDY BY APPEAL

Sec. 61-9. Decisions Subsequent to Filing of Appeal; Amended Appeals

Should the trial court, subsequent to the filing of a pending appeal, make a decision that the appellant desires to have reviewed, the appellant shall file an amended appeal within twenty days from the issuance of notice of the decision as provided for in Section 63-1.

The amended appeal shall be filed in the same manner as an original appeal pursuant to Section 63-3. No additional fee is required to be paid upon the filing of an amended appeal.

Within ten days of filing the amended appeal, the appellant shall file with the appellate clerk either a certificate stating that there are no changes to the Section 63-4 papers filed with the original appeal or any amendments to those papers. Any other party may file responsive Section 63-4 papers within twenty days of the filing of the certificate or the amendments.

If the original appeal is dismissed for lack of jurisdiction, **[**the**]** any amended appeal shall remain pending if it was filed from a judgment or order from which an original appeal properly could have been filed.

After disposition of an appeal where no amended appeals related to that appeal are pending, a subsequent appeal shall be filed as a new appeal.

If **[**the**]** an amended appeal is filed after the filing of the appellant's brief and appendix but before the filing of the appellee's brief and

appendix, the appellant may move for leave to file a supplemental brief and appendix. If **[**the**]** an amended appeal is filed after the filing of the appellee's brief and appendix, either party may move for such leave. In any event, the court may order that an amended appeal be briefed or heard separately from the original appeal.

If the appellant files a subsequent appeal from a trial court decision in a case where there is a pending appeal, the subsequent appeal **[**shall**]** may be treated as an amended appeal, and, if it is treated as an amended appeal, there **[**shall**]** will be no refund of the fees paid.

COMMENTARY: This proposed amendment clarifies that when an appeal is pending, a subsequent appeal may not necessarily be treated as an amended appeal, and, if there are multiple amended appeals, any amended appeal that was taken from a final judgment would survive the dismissal of the original appeal or any other amended appeal.

Sec. 61-16. Notice of [(1)] Bankruptcy Filing, [(2) Disposition of Bankruptcy Case and (3)] Order of Bankruptcy Court Granting Relief from Automatic Stay and Disposition of Bankruptcy Case

(a) If a party to an appeal files a bankruptcy petition or is a debtor named in an involuntary bankruptcy petition, that party shall immediately file a notice with the appellate clerk, including any supporting documentation from the Bankruptcy Court file, **[**with the appellate clerk**]** setting **[**. The notice shall set**]** forth the date the bankruptcy petition was filed, the **[**b**]**Bankruptcy **[**c**]**Court in which the petition was filed, the name of the bankruptcy debtor, **[**and**]** the docket number of the

bankruptcy case and how the automatic bankruptcy stay applies to the case on appeal. Any appearing party seeking to challenge the application of the automatic bankruptcy stay shall immediately file a notice with the appellate clerk, including any supporting documentation from the Bankruptcy Court file.

(b) **[**Upon resolution of the bankruptcy case, the party who filed for bankruptcy protection shall immediately file a notice with the appellate clerk that the case has been resolved in the bankruptcy court.**]** If the **[**b**]**Bankruptcy **[**c**]**Court grants relief from the automatic bankruptcy stay, in rem relief regarding the property or any other pertinent relief, the party obtaining such relief shall immediately file a notice with the appellate clerk **[**of the termination of the automatic stay**]** indicating such relief.

(c) Upon resolution of the bankruptcy case, the party who filed the bankruptcy petition or who was the debtor named in an involuntary bankruptcy petition shall immediately file a notice with the appellate clerk, including any supporting documentation from the Bankruptcy Court file, indicating that the case has been resolved in the Bankruptcy Court. Any other appearing party may also file a notice with the appellate clerk, including any supporting documentation from the Bankruptcy Court file, indicating that the case has been resolved in the Bankruptcy Court.

COMMENTARY: The purpose of this proposed amendment is to afford an appearing party the opportunity to respond to the filing of a bankruptcy notice and to sequentially address the filing of a notice

concerning a bankruptcy stay, a notice of relief from any stay, and a notice of the final resolution of the bankruptcy case.

CHAPTER 62

CHIEF JUDGE, APPELLATE CLERK AND DOCKET: GENERAL ADMINISTRATIVE MATTERS

Sec. 62-9. Withdrawal 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 62-8.

(b) An attorney may, by motion, withdraw his or her appearance for a party after an additional appearance representing the same party has been entered on the docket. A motion to withdraw pursuant to this subsection shall state that an additional appearance has been entered on appeal. The appellate clerk may as of course grant the motion if the additional appearance has been entered.

(c) Except as provided in subsections (a) and (b), no attorney whose appearance has been entered on the docket shall withdraw his or her appearance without leave of the court. A motion for leave to withdraw shall be filed with the appellate clerk in accordance with Sections 66-2 and 66-3. The motion shall include the current address of the party as to whom the attorney seeks to withdraw. No motion for leave to withdraw shall be granted until the court is satisfied that reasonable notice has been given to the party being represented and to other

counsel of record. Reasonable notice to the party or parties may be satisfied by filing along with the motion, a certified or registered mail return receipt signed by the individual party or parties represented by the attorney.

(d) (1) A motion for leave to withdraw appearance of appointed appellate counsel filed pursuant to Sections 23-41 (a) or 43-34, and supporting documentation, shall be filed under seal with the appellate clerk. Except as otherwise provided herein, the form of the motion shall comply with Sections 66-2 and 66-3. The brief or memorandum of law accompanying the motion shall comply with Sections 23-41 (b) or 43-35 in form and substance. The transcript of the relevant proceedings shall be filed concurrently with the motion to withdraw.

(2) The motion and supporting brief or memorandum of law shall be delivered to the petitioner or defendant. Counsel shall deliver a notice that a motion for leave to withdraw as appointed counsel has been filed, but shall not deliver a copy of the motion and supporting brief or memorandum of law to opposing counsel of record. The motion shall contain a certification that such notice has been delivered to opposing counsel of record and that a copy of the motion and supporting brief or memorandum of law has been delivered to the petitioner or defendant.

(3) The motion, brief or memorandum of law, and transcript shall be referred to the trial court for decision. If the trial court grants the motion to withdraw, counsel shall immediately notify his or her former client, by letter, of the status of the appeal, **[**and**]** of the responsibilities necessary to prosecute the appeal, and that, if the former client wishes

to challenge the trial court's decision allowing counsel to withdraw, the former client must file a motion for review with the Appellate Court in accordance with Section 66-6. Counsel shall file a copy of the letter with the appellate clerk. The trial court's decision shall be sealed and may be reviewed pursuant to Section 66-6. Subsequent motions regarding the trial court's decision on the motion to withdraw appointed counsel shall also be filed under seal.

(4) The appellate clerk shall maintain all filings and related decisions pursuant to this subsection under seal. The panel hearing the merits of the appeal shall not view any briefs and materials filed under seal pursuant to this subsection.

COMMENTARY: This proposed amendment requires counsel to inform his or her former client that, if the former client wishes to challenge the trial court's decision allowing counsel to withdraw, the former client must file a motion for review with the Appellate Court in accordance with Section 66-6. See *State* v. *Mendez*, 185 Conn. App. 476, 485 n.6 (2018) (*Prescott, J.*, concurring).

CHAPTER 63

FILING THE APPEAL; WITHDRAWALS

Sec. 63-4. Additional Papers To Be Filed by Appellant and Appellee [when Filing Appeal] Subsequent to the Filing of the Appeal

(a) Within ten days of filing an appeal, the appellant shall also file with the appellate clerk the following:

(1) A preliminary statement of the issues intended for presentation on appeal. If any appellee wishes to: (A) present for review alternative

grounds upon which the judgment may be affirmed; (B) present for review adverse rulings or decisions of the court which should be considered on appeal in the event the appellant is awarded a new trial; or (C) claim that a new trial rather than a directed judgment should be ordered if the appellant is successful on the appeal, that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues.

Whenever the failure to identify an issue in a preliminary statement of issues prejudices an opposing party, the court may refuse to consider such issue.

(2) A certificate stating that no transcript is deemed necessary, or a copy of the transcript order acknowledgment form (JD-ES-038) with section I thereof completed, filed with the official reporter pursuant to Section 63-8. If any other party deems any other parts of the transcript necessary, that party shall, within twenty days from the filing of the appellant's transcript papers, file a copy of the order form (JD-ES-038), which that party has placed in compliance with Section 63-8.

If the appellant is to rely on transcript delivered prior to the taking of the appeal, an order form (JD-ES-038) shall be filed stating that an electronic version of a previously delivered transcript has been ordered. The detailed statement of the transcript to be relied on required by Section 63-8 also must be filed. If any other party deems any other parts of the transcript necessary, and those parts have not been delivered at the time of the taking of the appeal, that party shall have twenty days to order those additional parts. If any other party is to rely on transcript delivered prior to the taking of the appeal, an order

form (JD-ES-0̲38) shall be filed within twenty days, stating that an electronic version of a previously delivered transcript has been ordered.

(3) A docketing statement containing the following information to the extent known or reasonably ascertainable by the appellant: (A) the names and addresses of all parties to the appeal, the names, addresses, and e-mail addresses of trial and appellate counsel of record, and the names and addresses of all persons having a legal interest in the cause on appeal sufficient to raise a substantial question whether a judge should be disqualified from participating in the decision on the case by virtue of that judge's personal or financial interest in any such persons; (B) the case names and docket numbers of all pending appeals to the Supreme Court or Appellate Court which arise from substantially the same controversy as the cause on appeal, or involve issues closely related to those presented by the appeal; (C) whether a criminal protective order, civil protective order, or civil restraining order was requested or issued during any of the underlying proceedings; **[**(C)**]** (D) whether there were exhibits in the trial court; and **[**(D)**]** (E) in criminal and habeas cases, the defendant's or petitioner's conviction(s) and sentence(s) that are the subject of the direct criminal or habeas appeal**[**,**]** and whether the defendant or petitioner is incarcerated. **[**as a result of the proceedings in which the appeal is being filed.**]** If additional information is or becomes known to, or is reasonably ascertainable by the appellee, the appellee shall file a docketing statement supplementing the information required to be provided by the appellant.

When an appellant or an appellee is aware that one or more appellees have no interest in participating in the appeal, the appellant and any other appellees may be relieved of the requirement of certifying copies of filings to those appellees by designating the nonparticipating appellee(s) in a section of the docketing statement named ''Nonparticipating Appellee(s).'' This designation shall indicate that if no docketing statement in disagreement is filed, subsequent filings will not be certified to those appellees.

If an appellee disagrees with the nonparticipating designation, that appellee shall file a docketing statement indicating such disagreement within twenty days of the filing of that designation. All documents filed on or before the expiration of the time for an appellee to file a docketing statement in disagreement as stated above shall be delivered pursuant to Section 62-7 (b) to all counsel of record. If no docketing statement in disagreement is filed, subsequent filings need not be certified to nonparticipating appellees.

(4) In all noncriminal matters, except for matters exempt from a preargument conference pursuant to Section 63-10, a preargument conference statement.

(5) A constitutionality notice, in all noncriminal cases where the constitutionality of a statute has been challenged. Said notice shall identify the statute, the name and address of the party challenging it, and whether the statute's constitutionality was upheld by the trial court. The appellate clerk shall deliver a copy of such notice to the attorney general. This section does not apply to habeas corpus matters based on criminal convictions, or to any case in which the attorney general

is a party, has appeared on behalf of a party, or has filed an amicus brief in proceedings prior to the appeal.

(6) In matters in which documents are under seal, conditionally or otherwise, or limited as to disclosure, a notice identifying the time, date, scope and duration of the sealing order with a copy of the order. (See Section 77-2.)

(b) Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues at any time until that party's brief is filed. Amendments to the docketing statement may be filed at any time. Amendments to the transcript statement may be made only with leave of the court. If leave to file such an amendment is granted, the adverse party shall have the right to move for permission to file a supplemental brief and for an extension of time. Amendments to the preargument conference statement shall not be presented in writing but may be presented orally at the preargument conference, if one is held.

(c) Failure to comply with this rule shall be deemed as sufficient reason to schedule a case for sanctions under Section 85-3 or for dismissal under Section 85-1.

COMMENTARY: The purpose of this proposed amendment is to require the appellant, at the time of the filing of the appeal, to indicate in the docketing statement whether a criminal protective order, civil protective order, or civil restraining order was requested or issued during any of the underlying proceedings to better enable the appellate clerk to ensure that protected information is not published on the Internet.

CHAPTER 66

MOTIONS AND OTHER PROCEDURES

Sec. 66-1. Extension of Time

(a) Motions to extend the time limit for filing an appeal shall be filed with the clerk of the trial court. Except as otherwise provided in these rules, the judge who tried the case may, for good cause shown, extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be filed is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court in which the appeal is filed. In no event shall the trial judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal.

(b) Motions to extend the time limit for filing any appellate document, other than the appeal or a motion for review of a ruling concerning a stay of execution pursuant to Section 61-14, shall be filed with the appellate clerk. The motion shall set forth the reason for the requested extension and shall be accompanied by a certification that complies with Section 62-7. An attorney filing such a motion on a client's behalf shall also indicate that a copy of the motion has been delivered to each of his or her clients who are parties to the appeal. The moving party shall also include a statement as to whether the other parties

consent or object to the motion. A motion for extension of time to file a brief must specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been filed.

(c) The appellate clerk is authorized to grant or to deny motions for extension of time promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or to defend the appeal, to move for or to oppose a motion for reconsideration, or to petition for or to oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises.

(d) An opposing party who objects to a motion for extension of time filed pursuant to subsection (b) of this section shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion.

(e) A motion for extension of time shall be filed at least ten days before the expiration of the time limit sought to be extended or, if the cause for such extension arises during the ten day period, as soon as reasonably possible after such cause has arisen. No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.

(f) Any action by the trial judge pursuant to subsection (a) of this section or the appellate clerk pursuant to subsection (c) of this section is reviewable pursuant to Section 66-6.

COMMENTARY: The purpose of this proposed amendment is to make the rule consistent with Section 61-14, which requires that a motion for extension of time to file a motion for review of a ruling concerning a stay of execution must be filed in the trial court.

CHAPTER 67

BRIEFS

Sec. 67-8. The Appendix; Contents and Organization

(a) An appendix shall be prepared in accordance with Section 67-2.

(b) The appellant's appendix shall be divided into two parts.

(1) Part one of the appellant's appendix shall contain: a table of contents giving the title or nature of each item included; the docket sheets, a case detail, or court action entries in the proceedings below; in chronological order, all relevant pleadings, including the operative complaint and any other complaint at issue, motions, requests, findings, and opinions or decisions of the trial court or other decision-making body (see Sections 64-1 and 64-2); the signed judgment file, if applicable, prepared in the form prescribed by Section 6-2 et seq.; the appeal form, in accordance with Section 63-3; the docketing statement filed pursuant to Section 63-4 (a) (3); any relevant appellate motions or orders that complete or perfect the record on appeal; and, in appeals to the Supreme Court upon grant of certification for review, the order granting certification and the opinion or order of the Appellate Court under review.

A signed judgment file is not required in the following noncriminal matters: habeas corpus matters based on criminal convictions; pre- and postjudgment orders in matters claiming dissolution of marriage,

legal separation or annulment; prejudgment remedies under chapter 903a of the General Statutes; and actions of foreclosure of title to real property.

In administrative appeals, part one of the appellant's appendix also shall meet the requirements of Section 67-8A (a). In criminal or habeas appeals filed by incarcerated self-represented parties, part one of the appendix shall be prepared by the appellee. See Section 68-1. In these appeals, the filing of an appendix by incarcerated self-represented parties shall be in accordance with subsection (c) of this rule.

(2) Part two of the appellant's appendix may contain any other portions of the proceedings below that the appellant deems necessary for the proper presentation of the issues on appeal. Part two of the appellant's appendix may be used to include excerpts from lengthy exhibits, **[**or**]** to include excerpts **[**quotations**]** from the transcripts deemed necessary by any parties pursuant to Section 63-4 (a) (2), provided that the transcript cover page and certification page are included, or to comply with other provisions of the Practice Book that require the inclusion of certain materials in the appendix. To reproduce a full transcript or lengthy exhibit when an excerpt would suffice is a misuse of an appendix. Where an opinion is cited that is not officially published, the text of the opinion shall be included in part two of the appendix.

(c) The appellee's appendix should not include the portions of the proceedings below already included in the appellant's appendix. If the appellee determines that part one of the appellant's appendix does not contain portions of the proceedings below, the appellee shall

include any such items that are required to be included pursuant to Section 67-8 (b) (1) in part one of its appendix. Where an appellee cites an opinion that is not officially published and is not included in the appellant's appendix, the text of the opinion shall be included in part two of the appellee's appendix. Part two of the appellee's appendix may also contain any other portions of the proceedings below that the appellee deems necessary for the proper presentation of the issues on appeal. If the appellee includes excerpts from the transcripts deemed necessary pursuant to Section 63-4 (a) (2) in the appendix, the transcript cover page and the certification page shall be included with the excerpts.

(d) In appeals where personal identifying information is protected by rule, statute, court order or case law, and in appeals that have been ordered sealed in part or in their entirety or are subject to limited disclosure pursuant to Section 77-2, all briefs and appendices shall be prepared in accordance with Section 67-2.

COMMENTARY: The purpose of this proposed amendment is to require that the appellant's appendix include the operative complaint and any other complaint at issue, and to require that the cover page and the certification page be included with any transcripts included in the appellant's appendix and the appellee's appendix.

Sec. 67-10. Citation of Supplemental Authorities after Brief Is Filed

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly file with the appellate clerk

a notice listing such supplemental authorities, including citations, with a copy certified to all counsel of record in accordance with Section 62-7. If the authority is an unreported decision, a copy of the text of the decision must accompany the filing, unless the authority is an advance release opinion of the Supreme or Appellate Court that is available on the Judicial Branch website or a slip opinion of the United States Supreme Court available on that court's website. [which] The filing shall concisely and without argument state the relevance of the supplemental citations and shall include, where applicable, reference to the pertinent page(s) of the brief. Any response shall be made promptly and shall be similarly limited.

This section may not be used after oral argument to elaborate on points made or to address points not made.

COMMENTARY: The purpose of this proposed amendment is to eliminate the requirement that unpublished, advance released opinions of the Connecticut Supreme and Appellate Courts and slip opinions of the United States Supreme Court that are available on the Internet accompany the notice of supplemental authority under this section.

CHAPTER 79a

APPEALS IN CHILD PROTECTION MATTERS

Sec. 79a-1. Child Protection Appeals Defined

Appeals in [C]child protection [appeals in juvenile] matters include all appeals from judgments in all proceedings concerning uncared for, neglected or abused children [and youth] within this state, termination of parental rights of children committed to a state agency, [petitions]

motions for transfers, removal or reinstatement of guardianship, motions for permanent guardianship and contested matters involving termination of parental rights or removal of guardian transferred or appealed from the Probate Court.

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 filed within twenty days from the issuance of notice of the rendition of the decision or judgment from which the appeal is filed. **[**The**]** A judge **[**who tried the case**]** may, for good cause shown, extend the time limit provided for filing the appeal. In no event shall the **[**trial**]** judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the initial appeal period, except in the case of an appeal in a termination of parental rights proceeding, for which the time for filing an appeal may be extended to a date no more than forty days from the expiration of the initial appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, and such motion is denied, the party seeking to appeal shall have no less than ten days from issuance of notice of the denial of the motion for extension in which to file the appeal.

(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 or by electronic delivery, the appeal

period shall begin on the day that notice of the judgment or decision is sent to counsel of record 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 appellate 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 appellate counsel may not be appealed during the new appeal period but **[**may**]** shall be challenged solely 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 file a child protection appeal shall not be extended past forty days (the original twenty days plus one twenty day extension for appellate review pursuant to Section 79a-3) from the date of issuance of notice of the rendition of the judgment or decision, except in the case of an appeal in a termination of parental rights proceeding, for which the time for filing an appeal shall not be extended beyond sixty days (the original twenty days plus one forty day extension) from the date of issuance of notice of the rendition of the judgment or decision.

Any party seeking to extend the time to file a child protection appeal past the limited appeal periods in this subsection shall seek permission to file a late appeal from the Appellate Court pursuant to Section 60-2 (5). Any motion for permission to file a late appeal in a child protection matter shall state the current status of any motion or application pending in the Superior Court and shall include an appendix with: (1) the decision or order of the Superior Court sought to be appealed and (2)

a list of all parties to the case in the Superior Court with the names, addresses, telephone numbers, e-mail addresses and, if applicable, the juris numbers of their counsel.

Sec. 79a-3. Filing of the Appeal

(a) **General provisions**

Appeals in **[**juvenile**]** child protection matters shall be filed in accordance with the provisions of Section 63-3 and all required fees shall be paid in accordance with Sections 60-7 and 60-8.

(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**]** that attorney shall ascertain that the indigent party expressly wishes to appeal**[**, the**]** and obtain the indigent party's current address, e-mail address and telephone number. The trial attorney shall explain to the indigent party the appellate review process set forth in this section. 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 or forty day extension of time to appeal pursuant to Section 79a-2 (a) and (e), a sworn application signed by the indigent party for appointment of **[**an**]** appellate counsel **[**review attorney**]** and a waiver of fees, costs and expenses, including the cost of an expedited transcript. **[**and**]** If the court finds the indigent party still to be indigent, the court shall not grant the application for appointment of appellate counsel but shall first appoint an appellate review attorney for the sole purpose of determining whether there is any nonfrivolous ground on which to

appeal. The trial attorney 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 or forty day extension of time to appeal pursuant to Section 79a-2 (a) and (e), a sworn application signed by the indigent party for appointment of **[**an**]** appellate counsel **[**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) An appellate review attorney determining whether there is a nonfrivolous ground for appeal shall file a limited ''in addition to'' appearance with the trial court for the purpose of that determination. If the appellate review attorney determines that there is **[**merit to an**]** a nonfrivolous ground on which to appeal, that attorney shall **[**file**]** notify the court, and the application for appellate counsel shall be granted by the court. The appellate counsel so appointed shall file a limited ''in addition to'' appearance with the trial court for the purpose

of prosecuting the appeal and shall file the appeal in accordance with Section 63-3.

(2) In a child protection proceeding that has not resulted in the termination of parental rights, **[**I**]**if the appellate review**[**ing**]** attorney determines that there is no **[**merit to an**]** nonfrivolous ground on which to appeal, that attorney shall promptly make this **[**decision**]** determination known to the indigent party, 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 indigent party, by letter, of his or her determination and of the balance of the time remaining to file an appeal as a self-represented party or to secure counsel, who may file an appearance to represent the indigent party on appeal at the indigent party's own expense. A copy of the letter shall be **[**sent to**]** filed with the clerk for juvenile matters forthwith.

(3) In a termination of parental rights proceeding, if the appellate review attorney determines that there is no nonfrivolous ground to appeal, that attorney immediately shall file, under seal, a motion for in-court review, which shall indicate that the appellate review attorney has thoroughly reviewed the record for potential errors and set forth the least meritless grounds that might arguably support an appeal and the factual and legal bases for the conclusion that an appeal would be frivolous. Simultaneous with the filing of the motion for in-court review, the appellate review attorney shall provide a copy of such motion to the indigent party seeking to appeal and shall serve counsel of record and the Division of Public Defender Services with a written notice that a motion for an in-court review by the appellate review

attorney has been filed, but shall not serve counsel of record or the Division of Public Defender Service with a copy of the motion or any supporting documentation. The clerk for juvenile matters shall schedule a hearing on the motion for in-court review with the presiding judge or other judge designated to hear the motion within ten days of the date of its filing.

(4) Unless the presiding judge was also the trial judge or is unavailable, the presiding judge shall conduct a non-evidentiary hearing to fully examine the motion for an in-court review and any argument or response by the indigent party, together with any relevant portions of the record. The presiding judge shall afford the indigent party an adequate opportunity to bring to the court's attention what he or she believes are appealable issues. In his or her discretion, such judge may require briefing. The hearing shall be closed except that the appellate review attorney and the indigent party shall attend. If the indigent party cannot attend the hearing for good cause shown, he or she may file, under seal, a written response to the motion for an in-court review prior to the date of the hearing. Absent compelling circumstances, the hearing shall not be continued if the indigent party does not appear.

(A) If after the in-court review, the presiding judge independently concludes that any appeal would be frivolous, such judge, within fourteen days of the date of the hearing, shall issue a decision, either written or oral, denying the indigent party's application for appellate counsel and setting forth the basis for his or her finding that an appeal would be frivolous. Any written or transcribed oral decision of the

presiding judge shall be filed under seal. The presiding judge also shall order the appellate review attorney to inform the indigent party, by letter, of the decision and the balance of the time remaining to file a motion for review and/or an appeal as a self-represented party or to secure counsel who may file an appearance to represent the indigent party for purposes of filing a motion for review and/or an appeal at the indigent party's own expense. A copy of the letter shall be filed with the clerk for juvenile matters forthwith. An indigent party may seek review of a denial of an application for appointment of appellate counsel on the basis of a finding by the presiding judge that any appeal would be frivolous solely by filing, under seal, a motion for review pursuant to Section 79a-2 (d). The Appellate Court shall expeditiously consider any such motion for review.

(B) If, after the in-court review, the presiding judge concludes that the indigent party's appeal is not frivolous, such judge shall grant the application for appointment of appellate counsel.

(5) Any presiding judge who also was the trial judge or is unavailable shall refer a motion for in-court review filed by an appellate review attorney to the chief administrative judge for juvenile matters for assignment to another judicial authority. If such presiding judge is also the chief administrative judge for juvenile matters, then the motion for in-court review shall be referred by the presiding judge to the administrative judge in the judicial district where the juvenile court hearing the motion for in-court review is located for assignment to another judicial authority.

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

The appellate clerk shall send notice to the clerk for juvenile matters and to the clerk of any trial court to which the matter was transferred that an appeal has been filed. Upon receipt of such notice, the clerk for juvenile matters shall send a copy of the 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, and to all other interested persons; and if the addresses of any such persons do not appear of record, **[**such juvenile clerk**]** the clerk for juvenile matters 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.

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

(a) Any written application to the court for appointment of **[**an**]** appellate counsel **[**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**]** counsel 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**]** counsel 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**]** counsel or waiver of fees, costs and expenses will not extend the appeal period unless a judge has extended the time limit provided for filing an appeal pursuant to Section 79a-2. A denial of the application may be addressed solely by motion for review under Section 66-6. See Section 79a-2 (c).

Sec. 79a-12. Inspection of Records

The records and papers of any **[**juvenile**]** child protection 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**]** child protection matter shall not appear on the record of the appeal.

Sec. 79a-13. Hearings; Confidentiality

(a) For the purpose of maintaining confidentiality, upon the hearing of an appeal from a **[**juvenile**]** child protection 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: The purpose of these proposed amendments is to conform the child protection rules with *In re Taijha H.-B.*, 333 Conn. 297 (2019), in which our Supreme Court determined that it was necessary to have additional procedural safeguards for determining whether an indigent parent will be assigned counsel to appeal from a judgment terminating his or her parental rights. The proposed amendments provide for the appointment of appellate review counsel for the limited purpose of conducting an initial review for nonfrivolous appellate issues, notice and an opportunity for the parent to respond, judicial review if counsel determines that no nonfrivolous issue exists, and a limited extension of the appeal period to accomplish these ends. In addition, the proposed amendments change the word ''juvenile'' to ''child protection'' and delete the word ''youth,'' consistent with a recent statutory amendment and amendments to the Superior Court rules that became effective in January, 2020.

CHAPTER 81

APPEALS TO APPELLATE COURT BY CERTIFICATION FOR REVIEW IN ACCORDANCE WITH GENERAL STATUTES CHAPTERS 124 AND 440

Sec. 81-3A. Grant or Denial of Certification

A petition by a party shall be granted on the affirmative vote of three of the judges of the Appellate Court. Upon the determination of any petition, the appellate clerk shall enter an order granting or denying the certification in accordance with the determination of the court and

shall send notice of the court's order to the clerk of the trial court and to all counsel of record.

COMMENTARY: The purpose of this proposed new rule is to reflect the amendment to General Statutes Section 8-8 by the legislature requiring that three, rather than two, judges of the Appellate Court grant a petition for certification to appeal in zoning cases.

CHAPTER 86

RULE CHANGES; EFFECTIVE DATE; APPLICABILITY

Sec. 86-1. Publication of Rules; Effective Date

(a) Before the justices of the Supreme Court and the judges of the Appellate Court adopt a new rule or change to an existing rule, the proposed rule or change, or a summary thereof, shall be published in the Connecticut Law Journal with notice stating the time when, the place where, and the manner in which interested parties may present their views on the proposed rule or change.

(b) Any new **[**Each**]** rule **[**hereafter**]** or change to an existing rule adopted by the justices **[**of the Supreme Court**]** and **[**the**]** judges **[**of the Appellate Court**]** shall be **[**promulgated by being**]** published **[**once**]** in the Connecticut Law Journal. The new rule or change shall become effective **[**at such date**]** as of the date that the justices and judges **[**shall**]** prescribe, but not less than sixty days after **[**its promulgation**]** such publication. The justices and judges may waive the sixty day provision if they **[**deem**]** determine that circumstances require that a new rule or **[**a**]** change **[**in**]** to an existing rule be adopted expeditiously.

(c) The justices and the judges may waive the provisions of subsection (a) if they determine that the circumstances require that a new

rule or change to an existing rule be adopted expeditiously, provided that adoption in connection with such a waiver shall be on an interim basis. The justices and judges shall prescribe an effective date for any new rule or change adopted on an interim basis, and such rule or change shall be published in the Connecticut Law Journal before the interim rule becomes effective. Thereafter, notice shall be published in the Connecticut Law Journal stating the time when, the place where, and the manner in which interested parties may present their views on the interim rule or change, after which the justices and judges may finally adopt the rule or change in accordance with subsection (b).

COMMENTARY: This proposed amendment more closely aligns the rule with Section 1-9 concerning notice and opportunity for public comment prior to the adoption of a new rule or an amendment to an existing rule by the Supreme Court justices and Appellate Court judges.