

RESPONSE TO BAR SUGGESTIONS ON PATHWAYS

Changes To Draft Rules Previously Made in Response to Bar Concerns

During 2021 and 2022, the Chief Justice, Chief Court Administrator, Deputy Chief Court Administrator, and Chief Administrative Judge of the Family Division met regularly about Pathways with a bar group that included representatives of the Connecticut Bar Association, the Family Law Section of the Connecticut Bar Association, the American Academy of Matrimonial Lawyers, and Legal Aid. The Branch provided the attorneys with an initial draft of proposed amendments to the Practice Book in September, 2022, and met with the bar group shortly thereafter. At that meeting, before the attorneys who were present had the opportunity to discuss the proposed rule changes with their respective constituencies, they expressed three preliminary concerns that were addressed via the following changes included in the redraft of September 26, 2022, that was provided to the bar group for circulation to their colleagues and for their further review:

1. In response to a concern they expressed that one party might file a pendente lite motion on the eve of a Case Date that the other party could be required to defend on short notice, we added the language that appears in **Section 25-34(b)**, allowing a party to object to the hearing of a motion filed less than five business days before a Case Date. In order to provide even greater certainty as to the motions that might be litigated on a Case Date, we have now added further language to that subsection, requiring each party to notify the other and the court at least five business days before a Case Date as to the pending motions the party intends to pursue at that time.
2. In response to the bar's concern that the proposed rules contained no criteria to guide the court's decision on whether to place a motion on the Motion Docket or hear it on a subsequent court date, we added the non-exclusive list of factors for the court to consider in **Section 25-34(b)**.
3. In response to the bar's suggestion that a specific time frame be stated for the scheduling of the Resolution Plan Date in actions for dissolution of marriage or civil union, legal separation, and annulment, we added language to **Section 25-50(a)** requiring the Resolution Plan Date to be set no less than 30 nor more than 60 days after the return date.

Schedule A

1. Regarding objections to motions, the bar suggests a period of five business days for an objection to be filed in order for it to be considered by the court. It should be noted that most motions in family matters are automatically considered arguable by the opposing party, whether or not an objection is filed. The primary exception concerns motions relating to discovery, which are arguable in the discretion of the court. During the

pandemic, a standing order regarding discovery motions was issued, providing a period of ten days for the opposing party to object to a motion before the court would rule on it without a hearing. We agree that it would be useful to cover this issue in the Practice Book, and we have adopted the bar's suggestion to use a period of five business days for the filing of objections to discovery motions (and any other nonarguable motions that might occasionally arise in family matters). **See proposed language in Section 25-34(b).**

2. Section 25-30. Statements To Be Filed. We have adopted the bar's suggestion to use a period of five business days in the two cited subsections.
3. Section 25-34. Procedure for Motion Docket. The suggestions regarding the allowance of oral argument are addressed in the manner set forth in #1 above. The proposed rule as previously drafted already allows for a party to request placement of a motion on the Motion Docket at **any** appearance before a judge, so it was not felt necessary to enumerate specific court events where such a request could be made. As to the time limit within which to place certain types of motions on the Motion Docket or grant a special assignment date, as noted above, we had previously included language in response to the bar's concerns about criteria for the court to consider in acting on requests for placement of motions on the Motion Docket in advance of the next Case Date or other court event. **See proposed language Section 25-34(b).** Rather than imposing a specific time frame for scheduling hearings on the specific motions cited by the bar, we have added language to apply the same criteria to those motions as well. We have declined to include the bar's suggestion that hearings on pendente lite motions generally be limited to one day in length, in the belief that the length and conduct of hearings are better left to the discretion of judges on a case-by-case basis.
4. Section 25-50. Case Management Under Pathways.
 - a. We have not adopted the suggestions for this section for several reasons. First, the bar suggests two different procedures, one to be followed in cases where an attorney has appeared for at least one of the parties and the other to be followed when both parties are self-represented. We strongly feel that for both logistical and equitable reasons, the same procedure must apply in all cases.

Second, the proposal would bypass in some cases the Resolution Plan Date (RPD), which is a critical part of the Pathways process. The specialized training received by Family Relations Counselors to conduct triage on RPDs has proven to be useful in all types of cases, whether they involve self-represented or attorney-represented parties.

Third, in the cases where there would still be a RPD under the bar proposal, the suggestion would significantly delay the time frame within which the RPD would

occur.¹ This is directly contrary to the goal of Pathways to bring the parties in to court for the early triage of the case, so that issues may be addressed and appropriate services put in place as soon as possible. The success of Pathways to date is largely attributable to the early scheduling of Resolution Plan Dates. There is no persuasive reason to change this core feature.

Finally, it should be noted that our proposed rule calls for the court to issue certain orders as part of the RPD process regarding scheduling, discovery, and the initiation of applicable services. During the earlier phases of the pandemic, when the courts were limited to remote proceedings, it was logistically difficult for parties and counsel to meet with a Family Services Counselor on an RPD and then immediately appear before a judge for the entry of such orders. However, with the resumption of most family proceedings in person, the process originally contemplated for Pathways has been possible, whereby after meeting with Family Services the parties and their attorneys have the opportunity to appear before a judge for such orders. In this way the purposes of the Mandatory Judicial Review Conference proposed by the bar (but only for cases in which an attorney has appeared) are fulfilled in **all** cases at the RPD, without the need for a separate court event scheduled as part of a separate process for cases involving attorneys.

- b. Regarding the proposed amendment to **Section 25-50(e)(1)**, we have added a reference to the Motion Docket as suggested, but without deleting the reference to Case Dates.
- c. We have adopted the bar's proposed change to **Section 25-50(g)** to use "business" rather than "calendar" days.

Schedule B

Explanatory Note: As noted above, we provided the bar group with our revised draft rule amendments on September 26, 2022, in which the three changes described in the first section of this summary were redlined. The bar group then returned the draft to us as Schedule B, with some additional proposed redlined changes. When viewing the document, it is difficult to determine which of the redlined changes were included in our 9/26/22 draft and which were added as suggestions of the bar in Schedule B. The comments below are directed only to those redlined changes which were proposed by the bar, not our originally proposed changes:

¹ There is an internal inconsistency in the bar's proposal on this point. In one place the suggestion is that the Resolution Plan Date be scheduled at least 90 days after the return date in actions for dissolution of marriage or civil union, legal separation, or annulment. In another it suggests that it be scheduled between 45 and 90 days of the return date. In any event, both suggestions would delay the RPD beyond the originally proposed time frame of 30 to 60 days after the return date, and beyond the current practice of scheduling them between 30 and 45 days after the return date.

1. Section 25-34(b): We have adopted the suggestion to use the word “evidence” in place of the word “testimony.” However, we have declined to adopt the bar’s proposal to eliminate language allowing for the possibility of the presentation of testimony, in addition to oral argument, at a hearing on a motion relating to discovery. Although such matters may typically be resolved by oral argument only, there are situations when having a party testify in court about issues relating to discovery (such as the existence of certain documents) may assist the court in entering appropriate orders. (The bar’s proposed language for the next subsection seems to recognize the possibility of the need for testimony regarding discovery motions.)
2. Section 25-34(d): We have adopted the suggestion to add the words “or other evidence.” The remaining suggested language for this subsection was not adopted because the subject of the suggestion is already covered by the language added as described in the response to Item #1 in Schedule A.

General

In addition to the specific suggestions made by the bar in Schedules A and B above, we have made the following changes to our initial draft in response to concerns they raised when communicating their suggestions to us:

1. As provided in **Section 25-30(f)** of our original draft, the purposes of the “Case Dates” that are set as part of the court’s scheduling order include hearing pendente lite motions. The bar has raised the concern that it is difficult to know which pending motions might be pursued or heard at a Case Date. During the pandemic, we recognized the legitimacy of this concern by issuing a standing order that calls for each party to notify the other and the court in advance of the Case Date as to the pending motions the party intends to pursue at that time. This procedure has generally proven effective when followed. We have revised our proposed draft to incorporate a requirement along these lines, so that it will be clearer to parties and counsel without need to refer to a standing order.
2. The bar has raised the criticism that Pathways ignores postjudgment motions, while noting that, “Thankfully, these are now being assigned RPD dates.” We are aware of no data to support the bar group’s assertion that postjudgment matters “consume 75-80% of judicial resources,” nor is that the experience of family judges. Similarly, the implication that the Pathways process was not designed to address postjudgment proceedings, and that the scheduling of RPDs for postjudgment motions is a new development, is erroneous. From the outset, Pathways has been intended for and applied to postjudgment matters as well as new actions, as has been made clear in presentations about the process and information posted on the Branch website. Resolution Plan Dates have been scheduled in postjudgment proceedings since the inception of the process.

There are some differences in the way Pathways is applied to postjudgment proceedings as opposed to new actions. For example, the court does not typically schedule Case Dates – intended to handle pendente lite motions and issues – in postjudgment matters. Also, the courts do not necessarily schedule a new Resolution Plan Date for each and every new postjudgment motion that is filed. For example, if an RPD is held following the filing of a postjudgment motion about parenting issues, the court may order services and schedule a future hearing on that motion. If the opposing party subsequently files his or her own motion regarding parenting issues, which is a common occurrence, a second RPD is usually not necessary or useful; the court may instead order that the second motion follow the same scheduling track as the first motion without need of another RPD.

In any event, to conform the proposed amendments to the process as applied and to clarify in the rules that Pathways also applies to postjudgment proceedings, we have added language to **Section 25-34(h)** specifically about postjudgment motions.