

From: Rafie Podolsky <RPodolsky@ctlegal.org>
Sent: Thursday, December 14, 2023 1:09 PM
To: Del Ciampo, Joseph
Subject: Rules Committee Docket #2023-008 regarding Pathways
Attachments: LS Pathways proposed revision 12-12-23 final.docx; Summary of proposed Pathways - Judicial Branch draft of 10-2-23.docx

Dear Atty. Del Ciampo:-

I am forwarding the email below to you so that the Rules Committee will have it whenever it returns to Docket #2023-008 regarding the Pathways program. You should note that it includes two attachments. We would appreciate your circulating it as appropriate.

Several of us met with Judge Diana in November to discuss the Judicial Branch's latest proposed revision to the Pathways proposal. At that meeting, Judge Diana invited us to suggest language as to our continuing concerns, which are largely about the difficulty and uncertainty in obtaining hearings on essential pendente lite motions and on contempts. The email below has been sent to Judge Diana but no follow-up has yet been scheduled.

Thanks very much for your processing of this information.

Sincerely,

Raphael L. Podolsky

On behalf of the legal services programs

Raphael L. Podolsky

Connecticut Legal Services, Inc.

16 Main St., 2nd floor

New Britain, CT 06051

860-836-6355

From: Enelsa Díaz <EDiaz@ghla.org>
Sent: Thursday, December 14, 2023 8:30 AM
To: Diana, Leo <Leo.Diana@jud.ct.gov>
Cc: 'Palardy, Tina' <Tina.Palardy@jud.ct.gov>
Subject: Legal Services' proposed language - Practice Book amendments re: Pathways

[CAUTION] External Sender:

Dear Judge Diana:

We write to you on behalf of Connecticut's four legal aid programs. We very much appreciated the opportunity to meet with you regarding the proposed Practice Book changes for Pathways and to have received the revised draft. The revisions took important steps toward addressing some of the concerns we shared. However, those revisions alone do not fully address our two greatest areas of concern for poor

people and victims of domestic violence - a structure that provides consistent and expeditious access to urgently needed pendente lite orders and an effective response to allegations of contempt.

During our meeting, you invited us to submit proposed language to you that would address our most significant concerns regarding the impact of Pathways Practice Book proposals on litigants living in poverty and victims of domestic violence. We are grateful for this opportunity and apologize for not getting these to you sooner.

Our suggested rewording of the proposed language is attached. It is written to show the additions and deletions from the most recent draft. We have also attached a summary of the principal changes that we recommend in a separate document.

In general, we see these proposed changes as particularly important:

- The first concern we shared was regarding parties' inability to get an early order on pendente lite motions, even when the parties appear in court on their RPD. If the parties' first appearance date in court is 30-45 days after the filing of a new case, and they are unable to reach an agreement during their RPD, it is critical that they be provided with an opportunity to request orders from a judge on that date and not be forced to wait for another court date which might not be provided for another 30-45 days later. In some busier courts, it can often be much longer than that. Therefore, the proposed changes we are submitting would allow the court to issue essential orders on the RPD, not just when the parties agree, but also when a party requests it and the situation warrants that. With these changes, judges will be enabled by the new rules to enter temporary orders.
- The second concern we shared was regarding the treatment of post-judgment motions which ordinarily involve a show-cause order for a specific date. It is critical that a party who takes the appropriate measure of securing a date certain from the clerk's office, and then serving the other party with that date, get access to an actual hearing on the date provided, especially regarding contempts. As it stands, parties get scheduled for an RPD which is not a hearing. Waiting for a resolution plan date, which often ends with no agreement, leaves the parties without access to a timely hearing and makes the order to show cause entirely ineffective unless it is held on the same date as the RPD. We have suggested changes to reflect that.

We have also suggested additional modifications.

Please free to contact us if you have questions or concerns about our suggestions or would like to discuss these further. We look forward to continuing to work with you to ensure that our family court system continues to be a resource to all families, especially our most vulnerable populations.

Thank you for your time and consideration.

Respectfully submitted,

Enelsa Díaz (GHIA), Lorraine Carcova (CLS), Matthew Provost (SLS), Margot Kenefick Burkle (NHIAA), and Raphael Podolsky (Legal Services Family Policy Advocate)

dissemination is strictly prohibited. If you suspect that you have received this transmittal in error, please notify me immediately at (860) 225-8678, or by replying to this email, and delete the transmittal and any attachments from your inbox and data storage systems. Thank you.

Sec. 25-34. Motions

(a) Each judicial district shall have a regular Motion Docket for scheduling pendente lite motions. Motions shall be placed on the Motion Docket in accordance with subsection (b) of this Section. Such docket shall be scheduled on a regular basis, but at least once every two weeks.

(b) Any pendente lite motion filed in an action described in subsection (a) of this Section, and not resolved at the resolution plan date, shall [, unless otherwise scheduled or docketed by the court, be deemed] automatically be scheduled for the next Motion Docket [Case Date] held in the action pursuant to section 25-50 or, if no future Motion Dockets [Case Dates] are to be held prior to [, then for] the [time of trial] next scheduled Case Date, then shall be automatically be scheduled for the next Case Date on the case. At least [five] two business days before the Motion Docket date or five business days before a Case Date, each party shall provide to the other party and file with the court a notice listing those of the party's pending pendente lite motions, if any, that the party wishes to pursue at the Motion Docket or Case Date, in the order of priority that the party wishes the motions to be heard. If a party fails to provide and file such list, or files a motion less than five business days before the Motion Docket or Case Date and the nonmoving party objects to having such motion heard on such [the Case] Date, the motion will not be heard on that date unless the court determines that the interests of justice would be served by hearing it on that [the Case] Date and doing so would cause no substantial prejudice to the nonmoving party.

With the exception of matters governed by Chapter 13, oral argument on any motion or the presentation of evidence thereon shall be allowed before the next court event at which the motion would otherwise be deemed scheduled pursuant to this section if an appearing party has requested that such motion be placed on the Motion Docket and the judicial authority has granted such request.

A request that a motion be placed on the Motion Docket may be made as follows: (1) When the parties appear before a judge, either party may orally request that a particular motion be placed on an upcoming Motion Docket, or (2) By filing a Caseflow Request (JD-FM-292) form with the section for requesting placement of a pendente lite motion on a Motion Docket completed. Nothing in this section shall preclude a party from requesting that a motion be placed on the Motion Docket prior to the resolution plan date.

In acting on a request to place a motion on the Motion Docket, the court shall [may] consider the following factors along with any other factors the court deems relevant: (1) The nature of the motion and the reasons stated for the request, including but not limited to the need of either party for a court order regarding (A) sufficient child support or alimony to meet reasonable current expenses, (B) custody, visitation or decision-making regarding children, (C) occupancy of the party's dwelling unit, (D) use of a motor vehicle, or (E) essential personal property of one party in the possession of the other party; (2) If not placed on the Motion Docket, the length of time before the next court date at which the motion could be heard; (3) Whether the motion is related to, or duplicative of, another motion or motions already heard or scheduled to be heard; (4) If the case has been assigned to a designated judge, the availability of that judge to hear the motion if it is placed on a Motion Docket.

Oral argument and the presentation of evidence on motions made under Chapter 13 and other nonarguable motions are at the discretion of the judicial authority. The nonmoving party

shall have a period of five business days to file an objection to such a motion, unless the Practice Book specifies a different period of time for objection to the particular type of motion filed, in which case the different period shall apply. After allowing the applicable period for objection, the court may, in its discretion, rule on the motion or assign the matter for oral argument or an evidentiary hearing pursuant to subsection (d) of this section, provided that argument or hearing shall be scheduled if any other rule applicable to the motion in question requires the same when an objection is filed.

(c) Any motion filed to waive the statutory time period in an uncontested dissolution of marriage or legal separation case will not be placed on the Motion Docket. The clerk shall bring the motion as soon as practicable to either the judicial authority assigned to hear the case, or, if a judicial authority has not yet been assigned, to the presiding judicial authority for a ruling on the papers. If granted, the uncontested dissolution or legal separation is to be scheduled in accordance with the request of the parties to the degree that such request can be accommodated, including scheduling the matter on the same day that the motion is granted.

(d) If the judicial authority has determined that oral argument or the presentation of evidence is necessary on a motion made under Chapter 13 or other nonarguable motion, the judicial authority shall set the matter for oral argument or an evidentiary hearing on a Case Date, Motion Docket upon consideration of the same factors set forth in Section 25-34(b) for the placement of arguable motions on the Motion Docket, or other date determined by the judicial authority.

(e) Parties are required to appear and be prepared to proceed with a hearing on the day of the assigned Motion Docket unless a timely request for continuance has been granted, or the motion is withdrawn or resolved by agreement in advance. If the matter will require more than one hour of court time, it may be specifically assigned for a date certain.

(f) Failure to appear and present argument on the date set by the judicial authority on a motion made under Chapter 13 or other nonarguable motion shall constitute a waiver of the right to argue unless the judicial authority orders otherwise. This subsection shall not apply to those motions where counsel appeared on the date set by the judicial authority and entered into an agreement for a scheduling order for discovery, depositions and a date certain for hearing that was approved and ordered by the court.

(g) Nothing in this Section shall prevent the judicial authority from assigning any other motion to be heard on the Motion Docket.

(h) Unless otherwise ordered by the court: (1) A post-judgment motion that [does not relate] contains an order for hearing and notice for a particular date which has been served upon the other party, alleges contempt of a previous court order, or relates to emergency [ex parte] relief will be heard by the court on that date. A resolution plan date shall also be assigned to that case for an earlier time on the same date provided in the order for hearing and notice, but shall not preclude the parties from proceeding to a hearing if an agreement is not reached by the parties. All other post-judgment motions will be assigned a resolution plan date in the same manner as set forth in section 25-50 (a); (2) If an additional post-judgment motion is filed in the

same case before the resolution plan date is held, it will be scheduled for the same resolution plan date; and (3) If an additional post-judgment motion is filed in the same case after the resolution plan date is held, but before the court hearing date for the original motion, the subsequent motion will be scheduled for the same hearing date as the original motion.

(P.B. 1998) (Amended June 20, 2011, to take effect Aug. 15, 2011; amended June 24, 2016 to take effect Jan. 1, 2017.)

Commentary: Under Pathways, a Motion Docket, which is explained in this Section, has been created for matters of urgency that cannot wait until the next scheduled court event. While it is neither necessary nor possible to enumerate all of the factors considered in a scheduling decision, the rule is intended to provide guidance to the parties as to some of the criteria the court may generally consider in placing a matter on the Motion Docket. Language was added to subsection (b) to (1) describe how motions will be handled on Case Dates; (2) address how objections to nonarguable motions will be handled; and (3) make language changes at the request of the bar regarding the use of the words “testimony” and “evidence.” A subsection (h) was added to set forth the procedures for the scheduling of post-judgment motions.

Sec. 25-50. Case Management Under Pathways

The Pathways approach shall be followed and shall include:

(a) A resolution plan date, which shall be assigned in dissolution of marriage, dissolution of civil union, legal separation, and annulment cases, no less than 30 days and no more than 60 days from the return date, and in custody and visitation cases in accordance with Sections 25-3 and 25-4, to meet with a family relations counselor to identify (1) all matters where the parties agree, (2) how likely the parties are to reach an agreement on any disputed issues, and (3) the resources needed to resolve the case. The family relations counselor will recommend an action plan for the court’s consideration, including a recommendation for one of three tracks: (1) Track A for cases that require the lowest level of court time and resources, including cases that are fully resolved on the resolution plan date (2) Track B for cases that are expected to require a moderate level of court time and resources, or (3) Track C for cases with disputes about major issues that are expected to require the highest level of judicial time and resources. Failure to appear at the resolution plan date or comply with the court’s orders regarding the resolution plan date may result in sanctions, or the entry of a nonsuit, default, or dismissal. After considering the recommendations of the family relations counselor and input from the parties, the court shall make a scheduling order within 10 calendar days of the resolution plan date which [may] shall include, but is not limited to, assigning the case to a track, scheduling future court dates (including one or more Case Dates), ordering a schedule for discovery, and specifying the steps the parties must take between such court dates. The parties must follow the terms of the scheduling order, or the case may be dismissed, or other sanctions may be imposed. Nothing in this section shall preclude the court from issuing temporary orders on the resolution plan date on any subject pending before the court by consent of the parties or, at the request of either party, in the interest of justice or the best interest of the minor children.

(b) In all cases, except those seeking only visitation, the party or parties shall file sworn financial affidavits on or before the resolution plan date.

(c) If, in a dissolution of marriage, dissolution of civil union, legal separation or annulment case, the defendant has not filed an appearance no sooner than thirty days after the return date, the plaintiff may file a motion in accordance with General Statutes Section 46b-67 (b) and, if granted, appear and proceed to judgment without further notice to the defendant, provided the plaintiff has complied with the provisions of Section 25-30. If such motion is filed, and the respondent was served personally or at the respondent's usual place of abode, the court may, in accordance with General Statutes Section 46b-67 (b), enter judgment with or without a hearing. If service was made in any other manner, no judgment shall be entered until after a hearing held at least sixty days after the return date.

(d) If the matter is uncontested, the parties may follow the proper procedures to proceed to judgment without a hearing or may appear and proceed to judgment at a hearing at any time, subject to the schedule of the court and provided the parties have complied with the provisions of Section 25-30. Otherwise the clerk shall assign the matter to a date certain for disposition.

(e) In a Track B or Track C case, the scheduling order issued by the court may include, but is not limited to, one or more of the following: (1) One or more Case Dates for the court to hear or address matters that need to be considered before the final trial date, (2) assignment of motions to a Motion Docket, (3) a date for pretrial, (4) a trial date, and (5) a discovery schedule.

(f) Unless otherwise ordered by the court, in any case assigned a judicial, family relations or special master pretrial the parties must exchange and submit to the authority presiding over the pretrial at least five business days prior to the scheduled pretrial (1) A non-argumentative memorandum that sets forth the facts relevant to the criteria in General Statutes §§ 46b-81 and 46b-82, (2) Written proposed orders in accordance with Section 25-30 (c) and (d), which shall be comprehensive and state the parties' requested relief, (3) Current sworn financial affidavits, including a detailed income statement, a list of assets and liabilities, the value of all assets, current value of all retirement and employment benefits and any proposed distribution, and (4) If there are minor children, a fully completed child support guidelines worksheet that the parties agree to. If the parties do not agree, each party shall individually provide a fully completed child support guidelines worksheet.

The parties must be prepared to provide any supporting documentation needed and bring such documentation to the pretrial.

If a party does not fully comply with this subsection, sanctions may be imposed by the presiding judge.

(P.B. 1998.) (Amended June 28, 1999, to take effect Jan. 1, 2000; amended June 12, 2015, to take effect Jan. 1, 2016.)

TECHNICAL CHANGE: In subsection (b), the reference to "subsection" in the disjunctive was made singular.

Commentary: This Section has been amended to reflect the elements and requirements of case management under Pathways, and other changes are intended to align this rule with the statutory provisions contained therein.

Sec. 25-51. When Motion for Default for Failure to Appear Does Not Apply

If, in any case involving a dissolution of marriage or civil union, legal separation, or annulment, the defendant has not filed an appearance, the plaintiff may proceed to judgment in accordance with Section 25-50 and General Statutes §46b-67. Section 17-20 concerning motions for default shall not apply to such cases.

Summary of Legal Services' Proposal to Practice Book changes re Pathways
(Judicial Branch draft of 10-2-23)

Section 25-34

- (a) Requires that Motion Dockets be held at least biweekly.
- (b) (1) Requires that pendente lite motions not resolved at the RPD automatically be scheduled for the next Motion Docket, not Case Date.
(2) Makes explicit that nothing precludes a party from requesting that a motion be placed on the Motion Docket before the RPD.
(3) In acting on a Motion Docket request, requires the court to consider at least five particular reasons if raised
 - (A) Child support and alimony
 - (B) Custody and visitation
 - (C) Reasonable current expenses
 - (D) Use of a motor vehicle
 - (E) Essential personal property in the other party's possession
- (f) Makes clear that the automatic assumption of waiver by failure to appear applies only to motions for discovery and other nonarguable motions where the court is requesting a hearing.
- (h) Requires post-judgment motions served on the opposing party with a specific order for hearing and notice date will be heard by the court on that date if they allege contempt of a previous court order or seek emergency relief. Such cases can also receive an RPD for an earlier time on that same hearing date so that a hearing can be held on that date if an agreement is not reached during the RPD.

Section 25-50

- (a) Requires the court to provide a scheduling order within 10 calendar days after the RPD and requires (rather than permits) that order to include a discovery schedule and specification of the steps the parties must take between court dates.
- (b) Makes explicit that the court can issue temporary orders on the RPD on any pending subject with the consent of the parties or, at the request of either party, in the interest of justice or the best interest of minor children.

Summary prepared by Atty. Raphael Podolsky and Atty. Enelsa Diaz