
From: Del Ciampo, Joseph
Sent: Monday, February 26, 2024 10:31 AM
To: Armata, Barry; Chaplin, Courtney; Green, Ernest; Macierowski, Jennifer; McDonald, Andrew; McLaughlin, Stephanie; Pierson, W; Prats, Sheila; Stewart, Elizabeth
Cc: Marin, Carolina; O'Connor, James; Petruzzelli, Lori
Subject: FW: Rules Committee Pathways proposal - #2023-008
Attachments: LSCounter_lvdpathwaysreplytolegalservices_022324.docx

Good morning,

Please see attached materials/comments from the legal service programs regarding the Pathways proposal; RC ID # 2023-008 on today's agenda.

Thank you.

-Joe

Joseph J. Del Ciampo
Director of Legal Services
Connecticut Judicial Branch

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

Fax: (860) 566-3449

This e-mail and any attachments/links transmitted with it are for the sole use of the intended recipient(s) and may be protected by the attorney/client privilege, work product doctrine, or other confidentiality provision. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution, use or action taken in reliance on the contents of this communication is STRICTLY PROHIBITED. Please notify the sender immediately by e-mail if you have received this in error and delete this e-mail and any attachments/links from your system. Any inadvertent receipt or transmission shall not be a waiver of any privilege or work product protection. The Connecticut Judicial Branch does not accept liability for any errors or omissions in the contents of this communication which arise as a result of e-mail transmission, or for any viruses that may be contained therein. If verification of the contents of this e-mail is required, please request a hard-copy version.

From: Rafie Podolsky <RPodolsky@ctlegal.org>
Sent: Monday, February 26, 2024 8:53 AM
To: 'Andrew.McDonald@jud.ct.gov' <Andrew.McDonald@jud.ct.gov>
Cc: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>
Subject: Rules Committee Pathways proposal - #2023-008

Dear Justice McDonald:

The legal services programs continue to disagree with some parts of the most recent version of the Judicial Branch's proposal for incorporating Pathways into the Practice Book. I have attached our most recent comments, which we sent to Judge Diana at the end of last week. We were working off of a document containing our prior recommendations (underlined) and Judge Diana's comments (in red in our copy of the

attached file), with our responses in purple and labeled "Response." You will see that we have modified some of our recommendations in light of Judge Diana's comments and sought to accommodate concerns raised, but there remain significant disagreements. Our most important continuing concerns result from the failure of the Judicial Branch proposal to assure that essential matters requiring judicial orders do not, in its proposal, provide an adequate mechanism for assuring a known, fixed date for a hearing before the court. We very much want to work in conjunction with the Branch to modify the proposed rules so as to accomplish this goal in a manner that is workable for the Branch.

It is our belief that the Family Law Section has also raised issues that have not yet been resolved.

We hope that the Rules Committee will permit time for further discussion and adjustment of the proposal before making a final decision.

Sincerely,

Raphael Podolsky

*Raphael L. Podolsky
Connecticut Legal Services, Inc.
16 Main St., 2nd floor
New Britain, CT 06051
860-836-6355*

This transmittal is intended for a particular addressee(s). It may constitute a confidential and privileged attorney-client communication or attorney work product. If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying, distribution, or 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.

Note: A slightly modified version of these rules was created after the draft upon which these proposals are made for some technical changes, not relevant to this discussion.

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. The Motion Docket would be required only as frequently as needed so as not to preclude the court from conducting other business due to a required time allocation for holding such a docket. The short calendar itself was only required by the rules to be held once a month. Temporary financial support is addressed in PA 23-7. Therefore, I do not agree with this suggestion.

Response: The proposed language already indicates that there will be a “regular” Motion Docket. However, we think it is important for “regular” to be defined with some specificity. Requesting that it be held at least twice per month is not unreasonable. Short calendar may have only been required by the rules to be held once per month, but in practice it was happening at least weekly, and as often as 3 times per week in some courts. Our suggestion is far less onerous and would not preclude the court from conducting other business.

(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. **This proposal changes the intended purpose and character of Motion Dockets. Motion Dockets were not created for pendente lite motions generally. They were created at the request of the family bar to address urgent issues that do not rise to the level of an emergency, where waiting for the Case Date may pose an undue burden on one or both parties.** If each pendente lite motion that did not settle at the resolution plan date were to be automatically scheduled for the Motion Docket, the docket would (1) once again be clogged with cases that may be taking up the resources of the court that they did not need, (2) preclude more pressing matters from being heard, and (3) cause multiple hearing dates for the same case where motions were filed at different times. The reason the court determines what matters are placed on the Motion Docket is to prevent the misallocation of resources and direct those resources to the matters that need them at the time that they are required. What this proposal would do is reserve

court time for a matter *in case* it is needed, rather than allocate court time to a matter that has been determined by the court to actually need it. The “cookie-cutter” approach to assignment of court events is, in part, what Pathways was created to avoid. It is intended to give cases what they need when they need it. Therefore, I do not agree with this suggestion.

Response: We agree that PL motions that are not urgent should not automatically be placed on the next Motion Docket. However, PL motions that are urgent in nature should be placed on the next Motion Docket consistent with paragraphs below. This section should make clear that such motions are to be treated in that matter.

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.

There was no response made to this requested language, however, it was also not included in the revised proposal. We believe it is important to retain this language so as to avoid any doubt that a motion can 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. **Other than changing “may” to “shall,” the highlighted areas would already be encompassed in the language in (1) “The nature of the motion and the reasons stated for the request,” and is, therefore, duplicative. Therefore, I do not agree with this suggestion.**

Response: We believe listing these factors out will provide more clarity for both the bench and the bar and will assure that these factors are considered when they are relevant. If they are already encompassed by the language in (1), then there is no harm, and there may be an actual benefit in including them explicitly. Changing the “may” to “shall” merely assures that these factors will be among the factors considered by the judge.

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.

Note: The subsection below was deleted because the statutory waiting period was repealed by the legislature.

~~(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.~~

Response: Agreed.

(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. **The way the proposed language seeks to clarify that it applies to nonarguable motions changes the nature of the existing rule. This rule historically has related to arguable *and* nonarguable motions set for hearing. This rule predated the rule that made discovery motions nonarguable in family matters. Without the proposed change it applies to *any* motion set down for argument before the court, whether the motion is arguable or**

nonarguable, which is what its intent has historically been. Therefore, I do not agree with this suggestion.

Response: Agreed.

(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. *As noted in the proposed language change itself, not all contempt motions will require a hearing, but the proposed language would still reserve court time and resources for a motion that may not need it, likely often precluding a case that actually needs the court time from being allocated that time to proceed. If a party feels the circumstances require a hearing prior to the assigned resolution plan date, a Caseflow Request can be filed. As noted in subsection (b) above, the “cookie-cutter” approach to assignment of court events is, in part, what Pathways was created to avoid. It is intended to give cases what they need when they need it. Therefore, I do not agree with this suggestion.*

Response: Being “heard by the court on that date” can include appearing before a judge with an agreement, and a hearing does not need to be held if it is not needed. The purpose of the Legal Services’ suggested language is to ensure that when an opposing party is served with an order to show cause date, that the court allow the moving party to proceed to hearing and obtain relief/remedial orders even when the other side does not appear. Providing a resolution plan date only, without a hearing, does not provide any relief to the moving party if the opposing party does not appear, or when the parties are unable to reach an agreement, and it defeats the purpose of obtaining an order to show cause date that was effectuated by service.

(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 (as determined by the court), at the request of either party, in the interest of justice or the best interest of the minor children. The timeframe of within ten days for issuance of the scheduling order is reasonable, however, changing “may” to “shall” as to what must be included would mandate discovery orders, even in Track A cases should the parties not be ready to move forward with their uncontested that same day. In addition, under many circumstances, it would seem that caselaw/ due process would prevent the entry of temporary orders merely at the request of a party on the resolution plan date. However, I offer language to address this issue.

New language from February 6, 2024 letter:

“Nothing in this section shall preclude the court from issuing temporary orders on the resolution plan date on any pending motion before the court by consent of the parties or as determined by the judicial authority.”

Response: We suggest the following language: “Nothing in this section shall preclude the court from issuing temporary orders on the resolution plan date on any pending matter before the court by consent of the parties or as otherwise determined by the judicial authority.”

We accept the phrase “as determined by the judicial authority” however we think the word “motion” should be changed to “matter” to cover situations in which the party wishes to proceed on the complaint and not on a motion, and would like to insert the word “otherwise” to make it very clear that the court can proceed even when there is no consent. Cases in which there is a request made by either party, but no there is no consent, should be allowed to proceed without the other side present if the opposing party was properly served.

(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.