O'Donnell, Shanna

Item 04-02a
(121619)

From: Del Ciampo, Joseph
Sent: Thursday, November 14, 2019 3:53 PM
To: Albis, Michael A.
Cc: O'Donnell, Shanna
Subject: RE: Proposal to eliminate Practice Book Section 25-60(c)

Thank you, Judge Albis. This will likely be placed on the December Rules Committee agenda. Have a good evening.

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From: Albis, Michael A. <Michael.Albis@jud.ct.gov>
Sent: Thursday, November 14, 2019 3:43 PM
To: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>
Cc: Bozzuto, Elizabeth <Elizabeth.Bozzuto@jud.ct.gov>; Carroll, Patrick <Patrick.Carroll@jud.ct.gov>
Subject: Proposal to eliminate Practice Book Section 25-60(c)

Attorney Del Ciampo,

I am writing with regard to the proposal by Maureen Martowska to amend Practice Book Section 25-60. As you explained in your recent email, Public Act 18-177 was enacted during the time that the proposal was previously under review. The act is now codified as General Statutes § 46b-6a.

In my previous correspondence to the Rules Committee dated December 17, 2018, I cited the new statute as one reason for my opposition to the proposal to amend the Practice Book to eliminate Section 25-60(c), which makes a court-ordered evaluation admissible in evidence so long as the author is available for cross-examination. I cited the procedure established by Public Act 18-177 for the selection of a licensed health care provider as a reason to allow the

evaluation into evidence without a separate later hearing on the experience and methodology of the evaluator to determine admissibility.

As you have explained, the Rules Committee tabled this matter at its January 2019 meeting to gauge the effect of the new statute on this issue, and would now like me to report on our experience with the new law in the interim.

As for my own experience over the course of the past year, I have had several cases in which licensed evaluators were requested and/or appointed to perform evaluations in custody disputes. My best recollection is that In those cases in which I actually made such an appointment pursuant to the new law, it was either by the agreement of the parties as to the specific evaluator or, in one case, by my selection of one of two evaluators presented for consideration by a guardian ad litem at a hearing at which both parties had the opportunity to be heard. I can recall no cases during that time period in which a party claimed that a chosen evaluator was unqualified or that his or her report should not be admitted into evidence by reason of the expertise or methodology of the evaluator.

I have also made inquiry of the other family presiding judges about their experience with this issue over the past year. Some presiding judges, or judges with whom they work, have reported objections to evaluation reports on the grounds of staleness, i.e. that the evaluation was completed too long before the hearing to be considered reliable evidence of current conditions; there is a body of case law on this issue. Others reported having received objections on hearsay grounds to certain information contained in a report. But no judge reported any claim or objection about the admissibility of an evaluation based on the methods or experience of the evaluator.

I hope the Rules Committee finds the foregoing information helpful, but I would be happy to respond to any further questions. Thank you.