

From: Giovanna Shay <GShay@ghla.org>
Sent: Tuesday, December 29, 2020 4:31 PM
To: Rules Committee; Del Ciampo, Joseph
Cc: Carroll, Patrick; Bozzuto, Elizabeth; Abrams, James; Albis, Michael A.; Shelley White; Nilda Havrilla; Moses Beckett; 'kflaherty@clrp.org'; 'j.pottenger@ylsclinics.org'; 'greg@ctfairhousingcenter.org'; 'dpruslow@ctveteranslegal.org'
Subject: Legal Services Comment for 1/11/21 Meeting - Rules Committee proposal to add email address requirements to Sections 3-1 and 3-3 (RC ID # 2020-021)
Attachments: Legal Services_Comment_Proposed_PB_3-1_3-3_Email_Amendment.12.29.2020.pdf

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[Legal Services Comment - Rules Committee proposal to add email address requirements to Sections 3-1 and 3-3 \(RC ID # 2020-021\)](#)

[For Consideration at January 11, 2021 Rules Committee Meeting](#)

In response to the invitation to comment from the Rules Committee, below, legal services organizations Greater Hartford Legal Aid, Connecticut Legal Services, New Haven Legal Assistance Association, Statewide Legal Services, Connecticut Legal Rights Project, Connecticut Fair Housing Center, and Connecticut Veterans Legal Center, along with Jay Pottenger of the YLS Housing Clinic, submit the attached comment. This comment responds to Judge Albis' proposal to amend the text of Practice Book Sections 3-1 and 3-3 and the appearance forms to request email addresses from self-represented litigants. Legal services' proposed changes are intended to mitigate the effects of the digital divide on low-income self-represented individuals.

We thank the Rules Committee for its consideration of our comment and welcome the opportunity to provide further information.

Sincerely,

Giovanna Shay
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From: Rules Committee <RulesCommittee@jud.ct.gov>
Sent: Sunday, December 20, 2020 1:27 PM
To: bchapman@ctbar.org; amy@almesq.com; Cecil Thomas <CThomas@ghla.org>; info@cttriallawyers.org; Stephanie Roberge <sroberge@kennedyjohnson.com>; jmaloney@cttriallawyers.org; eamarante@wiggins.com; ctdefenselawyers@gmail.com; Giovanna Shay <GShay@ghla.org>; Nilda Havrilla <NHavrilla@ctlegal.org>; Rafie Podolsky <RPodolsky@ctlegal.org>; Shelley White <SWhite@nhlegal.org>
Cc: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>
Subject: Rules Committee proposal to add email address requirements to Sections 3-1 and 3-3 (RC ID # 2020-021)

[CAUTION] External Sender:

At its meeting on December 14, 2020, the Rules Committee of the Superior considered for the first time a proposal from Judge Michael A. Albis, Chief Administrative Judge for Family Matters, to amend Sections 3-1 and 3-3 to add requirements concerning email addresses on appearances (RC ID # 2020-021). Video of this meeting is available at <https://youtu.be/BJpn-UMJeV8>

After discussion, the Committee tabled this matter until the meeting scheduled for January 11, 2021, and referred this proposal to the Connecticut Bar Association, the Connecticut Trial Lawyers Association, the Connecticut Defense Lawyers, and to the various legal aid organizations who requested the opportunity to comment (Greater Hartford Legal Aid, Connecticut Legal Services, and New Haven Legal Assistance). You have been copied on this email as a representative of one of these organizations. Please let me know if there is another contact person from your organization who should be included on this type of email in the future.

Please send any comments that your organization would like to make on this proposal to RulesCommittee@jud.ct.gov as soon as possible so that your comments may be circulated to the members of the Committee before the meeting.

I have attached a copy of the proposal for your convenience. Generally, the materials for Rules Committee proposals are not posted publically to any website or available online at this time. If you need materials related this or any other proposal in the future, they may be requested from External Affairs at External.Affairs@jud.ct.gov

Thank you,

Shanna O'Donnell

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Greater Hartford Legal Aid



VIA ELECTRONIC MAIL

December 29, 2020

Rules Committee of the Superior Court
Attn: Joseph J. Del Ciampo, Counsel
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RulesCommittee@jud.ct.gov

Re: Proposal 2020-021--Amendment to Practice Book Sections 3-1 and 3-3
For Consideration at January 11, 2021 Rules Committee Meeting

Dear Members of the Rules Committee:

We write on behalf of the undersigned legal services programs to submit this comment regarding Judge Albis' proposal to amend Practice Book Sections 3-1 and 3-3 governing appearances to ask parties to list an email address and to amend the appearance forms to ask parties to state whether they have no email address and are unable to obtain one. These forms (JD-CL-12 and JD-JM-13) have a place for listing an email address, but, if the box for an email address is left blank, there is no way of knowing if it is a personal preference not to disclose an existing email address or if the party actually has no email address. As Judge Albis points out in his letter, email addresses are essential for a party to access the Microsoft Teams platform used for remote video hearings. When the court has no email address for a party, the court must order the party in a hearing notice to notify the court of their email address, and obviously allow time for the party to do so.

We agree completely with Judge Albis' desire to eliminate this step. As legal services attorneys, familiar with the barriers faced by low income litigants whom we do not have the resources to represent, we know that they do not understand or appreciate the court's need for an email address. We have seen judgments enter against appearing self-represented parties who did not provide an address and whom the court notes "did not appear in the virtual courtroom" for a scheduled appearance. When we ask them why they did not provide an address, they often state they do not have an email address. But even when they do have an email address, they often state either that they did not understand what the notice required them to do, or that they did call or email the address but, for whatever reason, did not receive a Teams invite.

We also know that this issue with email addresses is only one of many significant barriers faced by low income litigants, many of whom are defendants and thus forced to respond to a case they did not file, seeking to participate in the judicial process which is now largely remote. Other significant challenges to participation in remote video proceedings include inadequate access to devices and unreliable internet. Individuals with disabilities or with Limited English Proficiency (LEP) also face significant obstacles to participation.

The current proposal from Judge Albis is to amend Practice Book Sections 3-1 and 3-3 to require parties to list an email address and to amend the Appearance Form JD-CL-12 to state:¹

If you have no email address **and are unable to obtain one**, so state. If you do not want to disclose your usual email address, you may create a separate email account for use in this case. The court needs your email address to allow you to participate in hearings held by remote video.

We ask that this proposal be expanded to address ways to reduce the impact of the digital divide on low-income self-represented parties. Specifically, for the reasons stated below, we ask that the amended language of Practice Book Sections 3-1 and 3-3 direct parties to list an email address "if one is in regular use."

We further propose that the appearance forms not just ask about the existence of email addresses, but that the forms ask individuals whether they have access to adequate internet and appropriate devices to participate in remote video hearings, and that it provide those who respond that they lack access with information about how to request an alternative means to participate in remote proceedings both visually and audibly.

The Problem: The Digital Divide and Barriers to Accessing Remote Hearings

Although counsel and many self-represented parties are participating successfully in remote proceedings on Microsoft Teams, many low-income families and seniors still face significant barriers to participation. Connecticut has made great strides

¹ Judge Albis' letter refers to JD-FM-12, but the appearance form JD-CL-12 is used in Family Court as well.

in bridging the digital divide for school children, but a significant percentage of households in our cities still lack working devices and adequate internet connection. This digital divide disproportionately affects families of color. See Amanda Blanco, *Report: 20% of Connecticut Homes Don't Have a Computer, and Nearly 25% Lack Reliable Internet, Making Working & Learning From Home a Challenge in the Pandemic*, HARTFORD COURANT, October 27, 2020, <http://www.courant.com/coronavirus/hc-news-coronavirus-dalio-digital-divide-report-20201027-fxfu3baixjatrmnq543oc3wgwy-story.html>.

Legal services has seen the effects of the digital divide first-hand during the pandemic. Some of our very poor clients are not equipped with sufficient internet and computer access even to monitor an email address for court notices on a consistent basis. We have clients who have only a limited number of minutes on a phone or a phone that lacks internet connectivity and a camera.

In guidance released in November 2020 regarding informal hearings in the context of COVID-19, the U.S. Department of Housing and Urban Development (HUD) recognized barriers to participation in remote hearings for individuals with disabilities, those with limited English proficiency (LEP), and households without access to adequate technology. HUD advised public housing authorities (PHAs) to “identify and resolve technology barriers prior to conducting the remote hearing or remote briefing.” It said:

The lack of technology or inability to use technology for a remote hearing or remote briefing can impose a disadvantage for individuals or families that may not be apparent to the PHA [Public Housing Authority]. Thus, the PHA should determine if barriers exist prior to scheduling the remote hearing If the participant does not have proper technology access which will allow the individual to fully participate, then the remote hearing or remote briefing should be postponed, or an in-person alternative must be provided. This includes if an individual’s witness for the remote hearing is unable to participate due to a lack of access to technology.

U.S. Department of Housing and Urban Development, Notice PIH 2020-32, Guidance for PHAs on the Allowability of Remote Hearings and Remote Briefings, *available at* <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2020-32.pdf> at 5-6. If these procedures are recommended guidance for informal hearings, at least the same if not more should be required for matters in court, such as evictions and child custody matters.

Telephone hearings without video are not an adequate substitute for access to remote video hearings and may pose due process problems. Without video capability for all participants, the factfinder cannot view witnesses and parties for credibility determinations, and the participants cannot share and view documents contemporaneously.

Communication technology that permits simultaneous “sight and sound” recording is required even for remote notarization under the Governor’s Executive Order

7Q, in part to confirm the identity of the individuals involved. See EO 7Q, issued March 30, 2020. At least as much should be required in Superior Court.

Legal Services Proposed Changes

Because of these barriers, legal services proposes adding language to the provisions of Practice Book Sections 3-1² and 3-3³ that pertain to self-represented parties, directing them to list an email address “if one is in regular use.”

² As amended, with legal services’ proposed additions in bold, Practice Book Section 3-1 would state: “When a writ has been signed by an attorney at law admitted to practice in the courts of this state, such writ shall contain the attorney’s name, juris number, mailing address, [and] telephone number, and email address, all of which shall be typed or printed on the writ, and the attorney’s appearance shall be entered for the plaintiff, unless such attorney by endorsement on the writ shall otherwise direct, or unless such attorney shall type or print on the writ the name, address, juris number and telephone number of the professional corporation or firm, of which such attorney shall be a member, entering its appearance for the plaintiff. The signature on the complaint of any person proceeding without the assistance of counsel pursuant to Section 8-1 shall be deemed to constitute the self-represented appearance of such party, who shall be required to type or print on the writ the party’s name, mailing address, telephone number and email address if one is in regular use.”

³ As amended, Practice Book Section 3-3 would state in relevant part: “(a) Except as otherwise provided in subsection (b), each appearance shall: (1) be filed on Judicial Branch form JD-CL-12, (2) include the name and number of the case, the name of the court location to which it is returnable and the date, (3) be legibly signed by the individual preparing the appearance with the individual’s own name and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto, if any, the mailing address, [and the] telephone number, and email address if one is in regular use.”

“(b) Each limited appearance pursuant to Section 3-8(b) shall: (1) be filed on Judicial Branch form JD-CL-121; (2) include the name and number of the case, the name of the court location to which it is returnable and the date; (3) be legibly signed by the individual preparing the appearance with the individual’s own name; and (4) state the party or parties for whom the appearance is being entered and the official (with position or department, if desired), firm, professional corporation or individual whose appearance is being entered, together with the juris number assigned thereto if any, the mailing address, [and the] telephone number, and email address; (5) define the proceeding or event for which the lawyer is *appearing*; and (6) state that the attorney named on the limited appearance is available for service of process only for those matters described on the limited appearance. All pleadings, motions, or other documents served on the limited appearance attorney shall also be served in the same manner on the party for whom the limited appearance was filed. For all other matters, service must be made on the

We further suggest alternate wording for appearance forms (JD-CL-12 for Criminal, Motor Vehicle, Civil, Small Claims, and Family and JD-JM-13 for Juvenile), to determine whether self-represented litigants are able to participate in remote proceedings, and to offer some alternatives, as follows:

Do you have internet access and a device with a camera that will allow you to participate in remote video hearings (phone with internet and camera, tablet, or computer)? Yes/No

Do you have an email address that you can check every day? Yes/No

If you answered “Yes” to all of the above, please provide your email address: _____. The email address that you provide will not remain private. If you would like to set up a separate email account to use in this case, you may do so. If you need help setting up an email account, a video tutorial is available on the Judicial Branch web site.⁴

If you answered “No” to any of these questions, please contact the Clerk’s office for information on the alternative ways you may access remote video proceedings in this case.

We think it is important to state that self-represented individuals, in particular, can contact the Clerk’s office regarding alternate ways to access remote video proceedings. The sole alternative should not be participating by telephone. Just as HUD suggests that public housing authorities offer alternatives such as loaner devices, *id.*, Judicial should offer means of participating via video, such as through a kiosk at the courthouse.

Legal services stands ready to work with the Judicial Branch to mitigate these access issues. We thank the Rules Committee for the opportunity to comment, and all of the Judicial Branch for its work during these unprecedented times.

party instead of the attorney who filed the limited appearance, unless otherwise ordered by court.

“(c) This section does not apply to appearances entered pursuant to Section 3-1.

⁴ Although posting a video tutorial on creating an email account may not be the typical business of the Judicial Branch, legal services believes this will be helpful to our most vulnerable and isolated clients. Some of these households are facing some of the greatest risks in proceedings in Housing and Family Court. We would be happy to assist in creating the video, in English and Spanish, and/or to cross-post to CTLawHelp.org.

Respectfully submitted,

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cc: The Honorable Patrick L. Carroll III, Chief Court Administrator
The Honorable Elizabeth A. Bozzuto, Deputy Chief Court Administrator
The Honorable James W. Abrams, Chief Administrative Judge for Civil Matters
The Honorable Michael A. Albis, Chief Administrative Judge for Family Matters