

3-3(b)



STATE OF CONNECTICUT
SUPERIOR COURT

Michael A. Albis
Chief Administrative Judge
Family Division

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October 4, 2018

Hon. Andrew J. McDonald
Chair of the Rules Committee of the Superior Court
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06106

RE: Maureen Martowska's request to revise Practice Book Section 25-60

Dear Justice McDonald:

It is my understanding that on September 17, 2018, the Rules Committee tabled the above matter in order to afford me the opportunity, as Chief Administrative Judge of the Family Division, to comment on the proposed revision. I thank the Rules Committee for the opportunity.

In particular, it is my understanding that you seek comment on the proposal to add language to Practice Book Section 25-60(b) regarding the denial or restriction of access to the report of an evaluation or study conducted by Family Services or a private evaluator. The proposed additional language would require a judge who orders the denial or restriction of access to the report (by a person otherwise entitled thereto under the rule) to provide "an articulated and reasonable basis for such denial or restriction."

As you know, when my predecessor, the Hon. Elizabeth A. Bozzuto, was previously asked to comment on the proposed revision, an appeal was pending in the Connecticut Appellate Court involving this issue. *Martowska v. White*, HHD-FA-05-4017673; AC 39970. As Judge Bozzuto suggested in her letter of February 5, 2018, the Rules Committee deferred consideration of the proposal pending the resolution of that appeal.

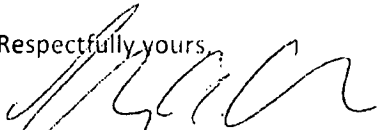
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The appeal has now been decided with its dismissal by the Appellate Court for lack of subject matter jurisdiction on July 31, 2018. Due to the nature of the disposition, the decision in the appeal provides little substantive guidance on the question of the proposed revision. In dismissing the appeal, the Appellate Court noted that the case in which the evaluation had been filed had ended years before the request for the report was made and had no pending motions.

I understand and share the goal of having a clear standard for judicial decisions on questions of access to the reports covered by the rule. But I believe an appropriate standard already exists, namely the well-established "abuse of discretion" standard which has been applied to orders regarding the disclosure of such reports.¹ In my view, the proposed new language would unnecessarily change the existing standard of review and limit the discretion of the trial court in these sensitive matters.

I would be happy to respond further to any questions or concerns the Rules Committee may have regarding this proposal. Thank you again for the opportunity to provide input.

Respectfully yours,



Michael A. Albis
Chief Administrative Judge, Family Division

cc: Hon. Patrick L. Carroll III
Hon. Elizabeth Bozzuto
Attorney Joseph J. Del Ciampo

¹ See, e.g., *Martowska v. White*, 149 Conn. App. 314 (2014), an earlier appeal in the same case noted herein.