STATE OF CONNECTICUT

SUPERIOR COURT

Michael A. Albis
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Attorney Joseph J. Del Ciampo, Director of Legal Services
Via email to Joseph.DelCiampo@jud.ct.gov

RE: Proposal to the Rules Committee by Attorney Gary I. Cohen to amend Practice Book Section 11-19.

Dear Attorney Del Ciampo:

Thank you for your letter of September 23, 2019, as Counsel to the Rules Committee, to ask for my comments on the above proposal.

Practice Book Section 11-19 provides that a judge or judge trial referee to whom a short calendar matter "has been submitted for decision" shall issue a decision within 120 days after the date the matter has been heard (or the last brief filed, if later). Attorney Cohen's proposal would shorten the time period to thirty days with respect to motions on "pendente lite issues in family cases."

I have several concerns about the proposal which lead me to oppose it. The term "pendente lite issues in family cases" encompasses a broad range of motions. Pendente lite motions that appear on the family short calendar may present difficult issues that ultimately require specially assigned full or multiple day hearings. When hearing and deciding motions for pendente lite alimony, child support, or custody, or motions for attorneys' fees based on the parties' respective financial situations, the applicable statutes require the court to consider most or all of the same criteria that it would have to consider in making final orders on the same issues after trial. In connection with such motions the parties may present extensive evidence and raise important legal issues.

I share Attorney Cohen's belief in the value of decisions that are as prompt as possible on important issues while a case is pending. But it is at least equally important for a judge to have the appropriate time to weigh the evidence, consider the law, and issue a reasoned decision. When the issues and evidence presented may be as complex as any presented at trial, for which our rules have long recognized 120 days as a reasonable time for decision, I believe it would be unreasonable for judges to be expected to issue decisions in one-quarter of the time simply because the issue was raised pendente lite.

Of course, not all pendente lite motions are complex or require lengthy hearings. It has been my experience and observation that family judges decide the great majority of pendente lite motions by ruling orally from the bench immediately upon conclusion of the hearing or by issuing written orders shortly thereafter. But the proposal would impose on **all** pendente lite motions a time limit for decision which is unreasonable in many instances.

I would also like to address Attorney Cohen's statement that many pendente lite motions are not even decided until after trial. As a matter of judicial efficiency, and often with the agreement of the parties, a pendente lite motion filed at a late stage in the proceedings may be continued to the time of trial to be heard simultaneously with the underlying action. This practice promotes judicial economy and saves the parties the time, effort and expense of litigating the same issues twice. The proposed rule change would make this tool of judicial efficiency much more difficult to use. Under the proposed rule, if pendente lite motions were continued to the time of trial for the sake of judicial economy, then upon completion of the trial the judge would face a confusing situation in which different time requirements applied to decisions on different – but related - issues arising from the same proceeding.

Moreover, the proposed time limit would not operate in a vacuum. The current 120-day time period is not just a reflection of the length of time it should take for a judge to consider and decide a single motion. Rather, it takes into account the fact that each short calendar matter is only a small part of a judge's total caseload. The current rule gives the judge the opportunity to prioritize his or her responsibilities and render decisions accordingly. For example, after a difficult custody trial, a judge may consider it important for the best interests the children to render a decision as soon as possible, well within the 120-day time limit. To do so, the judge may need to give the case a higher priority than pending short calendar decisions involving less urgent issues. The proposed rule would diminish a judge's ability to attend to his or her docket in such a manner. One highly litigious family case with a steady stream of pendente lite motions, all requiring decisions within thirty days, could monopolize a judge's time and attention to the detriment of other cases that equally deserve attention.

Recent statistics show that in a small percentage of family cases the parties file an unusually large number of pendente lite motions. I am concerned that the proposed new rule might encourage the filing of even more pendente lite motions in such cases. As a trial date nears, there is generally an incentive for the parties to focus on preparation for trial instead of continued pendente lite litigation. Of course, a party has the right at any time to file a motion on an issue that requires prompt attention. But I am concerned that the reduction of the time for decision on a pendente lite motion to thirty days might lead parties to file more motions close to the time of trial for strategic purposes, such as requesting an order for payment of attorney's fees on the eve of trial rather than including the request as a claim for relief at trial.

For all of these reasons, I oppose the proposal to reduce the time for judges to decide pendente lite issues in family matters.

Respectfully yours,

Michael A. Albis
Chief Administrative Judge, Family Division

cc: Hon. Patrick L. Carroll III
Hon. Elizabeth Bozzuto