

Connecticut Practice Book
Rules of Appellate Procedure
Effective March 1, 2009

February 10, 2009

RULES OF APPELLATE PROCEDURE

NOTICE

Notice is hereby given that the following amendments to the Rules of Appellate Procedure were adopted to take effect March 1, 2009. The amendments to Sections 62-9, 62-9A, 66-1, 67-2, 67-8, 69-3, 71-1 and 71-4 were approved by the Appellate Court on December 10, 2008, and by the Supreme Court on January 29, 2009. The courts have waived the provision of Section 86-1, requiring publication of rules sixty days prior to their effective date.

Attest:

Michèle T. Angers

Chief Clerk Appellate

INTRODUCTION

Contained herein are amendments to the Rules of Appellate Procedure. These amendments are indicated by brackets for deletions and capital letters for added language.

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RULES OF APPELLATE PROCEDURE

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AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE**Sec. 62-9. Withdrawal of Appearance**

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in lieu of the appearance of such attorney or party in accordance with Section 62-8.

(b) An attorney may, by motion, withdraw his or her appearance for a party after an additional appearance representing the same party has been entered on the docket. A motion to withdraw pursuant to this subsection shall state that an additional appearance has been entered on appeal. The appellate clerk may as of course grant the motion if the additional appearance has been entered.

(c) Except as provided in subsections (a) and (b), no attorney whose appearance has been entered on the docket shall withdraw his or her appearance without leave of the court. A motion for leave to withdraw shall be filed with the appellate clerk in accordance with Sections 66-2 and 66-3. The motion shall include the current address of the party as to whom the attorney seeks to withdraw. No motion for leave to withdraw shall be granted until the court is satisfied that reasonable notice has been given to the party being represented and to other counsel AND PRO SE PARTIES of record. Reasonable notice to the party or parties may be satisfied by filing along with the motion, a certified or registered mail return receipt signed by the individual party or parties represented by the attorney.

(d) A motion for leave to withdraw appearance of appointed appellate counsel pursuant to Section 43-34 shall be filed with the appellate clerk. The form of the motion shall comply with Sections 66-2 and 66-3, except that only an original and one copy shall be filed. The brief accompanying the motion, as required under Section 43-35, shall comply with Section 43-35 in form and substance. The original of the brief and the transcript of the pertinent proceedings shall be filed with the appellate clerk with the motion to withdraw. The motion, brief and transcript shall be referred to the trial court for decision. That decision may be reviewed pursuant to Section 66-6.

Sec. 62-9A. Hybrid Representation; Removal or Substitution of Counsel in Criminal AND HABEAS CORPUS Appeals

On appeal, a defendant OR HABEAS PETITIONER has no right to self-representation while represented by counsel. If an indigent defendant OR HABEAS PETITIONER wishes to replace appointed counsel or remove appointed counsel and appear pro se, in lieu of such counsel, the defendant OR HABEAS PETITIONER shall file a motion with the appellate clerk making such request and setting forth the reasons therefor. An original and three copies of the motion shall be filed. A

copy of such motion shall be served, in accordance with Section 62-7, upon the attorney sought to be removed or replaced and upon the state.

The appellate clerk shall forward the motion to the trial judge, who shall conduct a hearing and enter appropriate orders consistent with the relevant provisions of chapter 44 of these rules. The decision on the motion shall be filed with the appellate clerk.

COMMENTARY: This amendment provides that the same limitation on self-representation that applies to criminal defendants also applies to habeas petitioners. In addition, the amendment makes clear that the procedure for requesting the replacement or removal of appointed counsel and for appearing pro se applies to both criminal defendants and habeas petitioners.

Sec. 66-1. Extension of Time

(a) Except as otherwise provided in these rules, the judge who tried the case may, for good cause shown, extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be taken is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court to which the appeal is taken. In no event shall the trial judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal.

For extensions of time to file a cross appeal, see Section 61-8; to file a petition for certification to the supreme court, see Section 84-7; to file a petition for certification to the appellate court, see Section 81-5.

(b) If an appeal has been filed, the time provided for taking any step necessary to prosecute or defend the appeal may be extended by the court in which the appeal is pending.

(c) (1) Extensions shall be granted only upon a written motion filed with the clerk of the trial court, in the case of a preappeal motion, and with the appellate clerk, in the case of a postappeal motion. The motion, only an original of which need be filed, should set forth the reason for the requested extension and shall be accompanied by a certification that complies with Section 62-7. An attorney filing such a motion on a client's behalf shall also indicate that a copy of the motion has been mailed to each of his or her clients who are parties to the appeal. The moving party shall also include a statement as to whether the other parties consent or object to the motion. A motion for extension of time to file a brief must specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been taken.

(2) The appellate clerk is authorized to grant or deny motions for extension of time promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or defend the appeal, to move for or oppose a motion for reconsideration, or to petition for or oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises.

(3) An opposing party who objects to a motion for extension of time filed pursuant to subsection (b) of this section shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion.

(4) A motion for extension of time shall be filed at least ten days before the expiration of the time limit sought to be extended or, if the cause for such extension arises during the ten day period, as soon as reasonably possible after such cause

has arisen. No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.

(5) Any action by the trial court judge pursuant to subsection (a) of this section or the appellate clerk pursuant to subsection (c) (2) of this section is reviewable pursuant to Section 66-6.

(6) POSTAPPEAL MOTIONS FOR EXTENSION OF TIME MAY BE FILED, SIGNED OR VERIFIED BY ELECTRONIC MEANS THAT COMPLY WITH PROCEDURES AND TECHNICAL STANDARDS SET FORTH ON THE JUDICIAL BRANCH WEBSITE. A PAPER FILED BY ELECTRONIC MEANS IN COMPLIANCE WITH SUCH PROCEDURES AND STANDARDS CONSTITUTES A WRITTEN PAPER FOR THE PURPOSE OF APPLYING THESE RULES. SERVICE AND PROOF OF SERVICE SHALL BE MADE PURSUANT TO SECTIONS 10-13 AND 62-7.

COMMENTARY: The addition of the sixth subdivision authorizes the electronic filing of *postappeal* motions for extension of time and tracks the language of Section 4-4. The rule does not set forth the specific procedure that will apply to such filings but, instead, refers the filer to the website of the Judicial Branch. Technical changes that might affect electronic filing can be communicated more quickly if published on the website, as opposed to being published by rule.

Sec. 67-2. Format; Copies; ELECTRONIC BRIEFING REQUIREMENT FOR CASES TO BE ARGUED IN THE SUPREME COURT

(A) Original briefs and appendices shall be typewritten or clearly photocopied from a typewritten original on white 8¹/₂ by 11 inch paper. Unless ordered otherwise, the brief shall be copied on one side of the page only. The brief shall be fully double spaced; footnotes and block quotations may, however, be single spaced. Only the following two typefaces, of 12 point or larger size, are approved for use in briefs: arial and univers.

(B) If constitutional provisions, statutes, ordinances, regulations or portions of the transcript are contained in an appendix, they may be reproduced in their original form so long as the document is not reduced to less than 75 percent of its original form.

(C) Each page of a brief or appendix shall have as a minimum the following margins: top, 1 inch; left, 1 and ¹/₄ inch; right, ¹/₂ inch; and bottom, 1 inch.

(D) Pages shall be numbered in the center of the bottom of the page.

(E) Briefs and appendices shall be firmly bound ¹/₄ inch from the left side, at points approximately ¹/₄, ¹/₂ and ³/₄ of the length of the page, so as to make an easily opened volume.

(F) Any request for deviation from the above requirements shall be addressed to the appellate clerk.

(G) If the appeal is in the supreme court, the original and twenty-five legible photocopies of each brief and appendix shall be filed with the appellate clerk, accompanied by certification of service attached to the original brief only that a copy thereof has been sent to each counsel of record and to any trial judge who rendered a decision which is the subject matter of the appeal, in compliance with Section 62-7. If the appeal is in the appellate court, the original and fifteen legible photocopies of each brief and appendix shall be filed with the appellate clerk, accompanied by certification of service attached to the original brief only that a copy thereof has been sent to each counsel of record and to any trial judge who rendered a decision which is the subject matter of the appeal, in compliance with Section 62-7. See Section 65-1 for cases subsequently transferred. Every brief shall designate on the front page the name, telephone and facsimile numbers of the individual counsel who is to argue the appeal. The plaintiff and defendant shall be referred to as such rather than as appellant and appellee, wherever it is possible to

do so. For the purposes of this rule, on a reservation, the plaintiff below shall be regarded as the appellant.

[An appendix of any length may be reproduced on both sides of a page; an appendix, however, in excess of fifty numbered pages must be reproduced on both sides of a page. In addition, an appendix in excess of one hundred numbered pages must be separately bound.]

(H) Briefs and separately bound appendices shall have a suitable front cover of heavy paper in the color indicated: briefs for appellants and plaintiffs in error, light blue; briefs for appellees and defendants in error, pink; reply briefs, white; briefs for amicus curiae, light green. Covers of briefs filed for cross appeals shall be of the same color as indicated for that party on the original appeal briefs. A back cover is not necessary; however, if one is used, it must be white.

(I) Briefs and separately bound appendices must bear on the cover, in the following order, from the top of the page: (1) the name of the court; (2) the number of the case; (3) the name of the case as it appears in the judgment file of the trial court; (4) the nature of the brief (e.g., brief of the defendant-appellant; brief of the plaintiff-appellee on the appeal and of the plaintiff-cross appellant on the cross appeal); (5) the name, address and, if they are different from arguing counsel's telephone and facsimile numbers, the telephone and facsimile numbers of the party's counsel of record, and of the arguing counsel, if different. The foregoing shall be displayed in the upper case of an arial or univers typeface of 12 point or larger size. A certificate shall be attached to the signed, original brief, indicating that the brief complies with all the provisions of this rule.

(J) SECTIONS 67-4, 67-5 AND 67-8 SHOULD BE CONSULTED FOR GUIDANCE AS TO WHEN AN APPENDIX IS NECESSARY AND FOR SPECIFIC REQUIREMENTS REGARDING APPENDICES.

(K) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (G) OF THIS SECTION, IN A CASE THAT IS TO BE ARGUED IN THE SUPREME COURT, AN ELECTRONIC VERSION OF EVERY BRIEF FILED BY A PARTY REPRESENTED BY COUNSEL, OR A PERSON REPRESENTED BY COUNSEL WHO HAS BEEN GRANTED PERMISSION TO APPEAR AS AN AMICUS CURIAE, SHALL BE SUBMITTED TO THE COURT IN ACCORDANCE WITH GUIDELINES ESTABLISHED BY THE COURT AND PUBLISHED ON THE JUDICIAL BRANCH WEBSITE. THE ELECTRONIC VERSION SHALL BE SUBMITTED AS SOON AS PRACTICABLE AFTER THE FILING OF THE PARTY'S PAPER BRIEF. A PARTY WHO IS NOT REPRESENTED BY COUNSEL IS NOT REQUIRED TO SUBMIT AN ELECTRONIC VERSION OF HIS OR HER BRIEF. ANY APPENDIX, WHETHER ATTACHED TO THE BRIEF OR SEPARATELY BOUND, SHALL NOT BE ELECTRONICALLY SUBMITTED.

COMMENTARY: The rule has been technically amended by adding lettered subsections. The purpose of new subsection (j) is to dispel any confusion about the use and format of appendices. Sections 67-4, 67-5 and 67-8 are specifically mentioned to ensure that litigants consult those rules with regard to appendices. The paragraph in the previous version of this rule that addressed the reproduction of materials on both sides of a page and when an appendix must be separately bound has been moved to Section 67-8.

In addition, new subsection (k) requires that parties represented by counsel submit briefs electronically in cases to be argued in the supreme court. At this time, only parties represented by counsel may submit electronic briefs to the court. The electronic submission requirement in new subsection (k) does not eliminate the need to file paper copies of briefs.

Sec. 67-8. The Appendix

No appendix is required in either a court or a jury case, except where an opinion is cited that is not officially published, in which case the text of the opinion must

NOTE: These pages (7B and 8B) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 10 February, 2009.

be included in the appendix. An appendix may be used to excerpt lengthy exhibits or quotations from the transcripts or to comply with the provisions of Section 67-4 subsections (d) or (e). To reproduce a full transcript or lengthy exhibit when an excerpt would suffice is a misuse of an appendix. If use of any appendix is indicated, all materials must be included in a single appendix.

THE APPENDIX SHALL BE PREPARED IN ACCORDANCE WITH SECTION 67-2. An appendix shall be paginated separately from the brief and may be bound with it or separately. Where, however, binding the brief and appendix together would affect the integrity of the binding or where the appendix exceeds one hundred numbered pages, the appendix and brief shall be bound separately. Pages of an appendix shall be numbered consecutively and be preceded by the letter "A" (e.g., A1 . . . A25 . . . A53).

AN APPENDIX OF ANY LENGTH MAY BE REPRODUCED ON BOTH SIDES OF A PAGE; AN APPENDIX, HOWEVER, IN EXCESS OF FIFTY NUMBERED PAGES MUST BE REPRODUCED ON BOTH SIDES OF A PAGE. An appendix shall have at its beginning a table of contents of any papers in it and shall also have an index of the names of witnesses whose testimony is cited within it. If any part of the testimony of a witness is omitted, this shall be indicated by asterisks. After giving the name of a witness, the party who called that witness shall be designated and it shall be stated whether the testimony quoted was given on direct, cross or other examination.

COMMENTARY: This section was amended by adding a reference to Section 67-2, which provides general format requirements for briefs and appendices, and inserting the third paragraph, which had previously been contained in Section 67-2. Both this section and Section 67-2 must be consulted when preparing an appendix.

Sec. 69-3. Time for Assignments; Order of Assignment

Assignments of cases for oral argument ordinarily will be made in the order in which the cases become ready for argument pursuant to Section 69-2. Requests for variations from this order, stating the reason therefor, shall be made by letter certified pursuant to Section 62-7, addressed to the appellate clerk and delivered, mailed or sent by facsimile to the clerk's office in time for the appellate clerk to receive it at least two working days on which the clerk's office is required to be open before assignments are made. AN ATTORNEY MAKING SUCH A REQUEST SHALL ALSO INDICATE THAT A COPY OF THE REQUEST HAS BEEN MAILED TO EACH OF HIS OR HER CLIENTS WHO ARE PARTIES TO THE APPEAL.

Assignments for oral argument in the supreme court and appellate court shall take precedence over all other judicial branch assignments.

The appellate clerk will forthwith mail copies of the assignment list to all counsel of record.

COMMENTARY: This change requires that an attorney who requests a variation from the usual order of assignment of a case for oral argument send a copy of the request to his or her clients who are parties to the appeal. The requirement parallels that in Section 66-1, which requires that motions for extension of time be certified to the parties that counsel represents on appeal.

Sec. 71-1. Appellate Judgment Files

Judgments of the court may be embodied in judgment files, to be drawn upon request and signed by the appellate clerk. Unless the court otherwise directs, A [its] judgment[s] [and orders] shall be deemed to have been rendered [or made] on the date [they] AN OPINION OR MEMORANDUM DECISION appearS in the Connecticut Law Journal; EXCEPT THAT IF AN OPINION OR DECISION IS ISSUED BY SLIP OPINION OR BY ORAL ANNOUNCEMENT FROM THE BENCH, THE JUDGMENT SHALL BE DEEMED TO HAVE BEEN RENDERED ON THE DATE THAT THE SLIP OPINION IS MAILED OR THE ORAL

ANNOUNCEMENT IS MADE. IN THE CASE OF AN ORDER ON, FOR EXAMPLE, A MOTION OR PETITION, THE ORDER SHALL BE DEEMED TO HAVE BEEN MADE ON THE DATE THAT the appellate clerk ISSUES NOTICE OF THE ORDER [given by] to the clerk of the trial court and to all counsel of record. [and the] [j]Judgments or orders shall be entered as of [that] THE APPROPRIATE date.

COMMENTARY: The changes in both Sections 71-1 and 71-4 have been made to clarify the operative date of appellate judgments and orders. This section, as previously written, did not address when a slip opinion was deemed “officially released.” The amendment makes it clear that the official release date of a slip opinion is when the opinion is released to the parties, as opposed to when it is eventually published. In addition, the amendments provide that the official release date of an order is the date that it was sent to the trial court clerk and counsel of record. This will eliminate any confusion stemming from the fact that orders on petitions for certification, like slip opinions, are later published in the Connecticut Law Journal. This clarification is important because Section 71-5 refers to the official release date of “the decision or order being challenged” as the operative date for calculating the deadline for filing a motion for reconsideration. In addition, the amended section now refers to memorandum decisions that are issued by the appellate court.

Sec. 71-4. Opinions; Rescripts; Notice; OFFICIAL RELEASE DATE

(a) After the court hands down an opinion in any case other than a case involving a question certified from a federal court, the reporter of judicial decisions shall send a copy of the opinion and the original rescript to the clerk of the trial court and shall send a copy of the rescript to the appellate clerk.

(b) Notices of decisions upon motions and of orders of the court shall be given by the appellate clerk to the clerk of the trial court and to all counsel of record.

(c) THE OFFICIAL RELEASE DATE OF AN OPINION OR MEMORANDUM DECISION APPEARS IN THE COURT’S OPINION OR MEMORANDUM DECISION. THE OFFICIAL RELEASE DATE OF A SLIP OPINION IS THE DATE THAT THE SLIP OPINION IS MAILED. IN THE CASE OF AN ORDER ON, FOR EXAMPLE, A MOTION OR PETITION, THE OFFICIAL RELEASE DATE IS THE DATE THAT the appellate clerk ISSUES NOTICE OF AN ORDER [given by] to the clerk of the trial court and to all counsel of record.

(d) The opinions of the court in the bound volumes of the Connecticut Reports and the Connecticut Appellate Reports are the official opinions. The appellate clerk is authorized to furnish official copies of those opinions and, until the bound volumes are published, of the opinions as they appear in the Connecticut Law Journal.
