

**Advisory Committee on Appellate Rules
February 2, 2017**

The meeting was called to order by Justice Palmer at 10 a.m. in the Attorney Conference Room of the Supreme Court.

Members in Attendance:

Justice Richard N. Palmer, Co-Chair
Chief Judge Alexandra D. DiPentima, Co-Chair
Attorney Jeffrey Babbin
Attorney Colleen Barnett
Attorney Kathryn Calibey
Attorney John DeMeo
Attorney Richard Emanuel
Attorney Paul Hartan
Attorney Wesley Horton
Attorney Susan Marks
Attorney Jamie Porter
Attorney Charles Ray
Attorney Thomas Smith
Attorney Lauren Weisfeld
Attorney Giovanna Weller
Attorney Carolyn Ziogas

Members not in attendance:

Judge Sheila Huddleston
Gregory D'Auria

Additional Attendees:

Attorney Jill Begemann
Attorney Jessie Opinion

I. Old Business

A. Approval of Minutes of September 26, 2016

The committee unanimously approved the minutes of the September 26, 2016 meeting.

In addition, Judge DiPentima and Attorneys DeMeo and Hartan explained changes to the membership of the committee. Attorney Hartan has succeeded Attorney Pam Meotti as the chief administrative officer of the appellate system. Attorney Ziogas was welcomed as a member in her role as acting chief clerk of the appellate system. Attorney Barnett was welcomed as a member.

B. Proposal that § 66-5 be amended to require that transcript be furnished with some motions for articulation

Attorney DeMeo explained that the present proposal was revised in cooperation with Judge Bright to address the concerns raised by the committee at the last meeting. The language regarding "supplemental briefs, oral argument and provision of transcripts" was borrowed from section 61-10, the articulation rule.

Attorney Horton moved that the proposal be amended to remove "supplemental briefs, oral argument and" from the new language. The committee discussed whether that language should also be removed from section 61-10, and Attorney Babbin's suggestion of including a

cross-reference to that section instead. It was determined that sections 66-5 and 61-10 serve different purposes, and the committee tabled any discussion of amending 61-10 at this time. Attorney Weller seconded Attorney Horton's motion to amend the proposed language in section 66-5, and the committee members agreed.

Attorney Weller raised a concern regarding language in the proposed commentary that suggested that the trial court may have difficulty recalling the specifics of the case or decision, and it was agreed that the sentence should include the words "in some cases." Attorneys Calibey and Ray raised concerns with the second sentence of the proposed commentary, and it was agreed that that sentence should be eliminated. Attorney Porter and others raised a concern with the use of "should" in the final sentence, and Justice Palmer suggested using "may wish to." Attorney Ray suggested that attorneys responding to motions for articulation may also wish to append transcripts.

The final commentary proposed:

"A motion for articulation is often filed long after the trial court has rendered its decision and, in some cases, the court may have difficulty recalling the specifics of the decision for which articulation is sought. Where a party has obtained a transcript of the trial court proceedings involving the point of law or ruling for which articulation is sought, that party may wish to append the transcript to the motion for articulation or their response to that motion."

Attorney Horton moved to adopt the rule change and commentary as amended, and that the commentary be retained going forward. That motion was seconded by Attorney Babbin and passed unanimously.

C. Proposal that § 61-11 be amended to provide that no automatic stay shall apply to orders in family support matters

Attorney Porter explained that the proposal was initially submitted to this committee by Attorney Joseph Del Ciampo at the request of the Chief Family Support Magistrate John Colella. The concern at the last meeting was that the language in the initial proposal appeared to suggest that a direct appeal to the Appellate Court from decisions of a family support magistrate was permitted. The applicable statutes provide that decisions of family support magistrates must be appealed to the Superior Court, and the decision of that court may be appealed to the Appellate Court. The amended proposal and commentary clarified the issue. Attorney Ray suggested a minor revision.

Attorney Horton moved to adopt the rule change and commentary as amended, and that the commentary be retained going forward. That motion was seconded by Attorney Porter and passed unanimously.

Attorney DeMeo will draft a letter to Attorney Del Ciampo, including Attorney Porter's memo, explaining the committee's decision.

D. Discussion re need for amendments to rules governing writs of error

Attorney Horton continues to believe that writs of error should be abolished and that the judicial branch should propose amendments to the relevant statutes. Attorneys DeMeo and Hartan discussed the present challenges that writs of error posed with regard to electronic filing, which was a pressing concern. Judge DiPentima suggested that outside input was needed on this project, in addition to work by Attorneys Hartan, DeMeo, and Ziogas. Attorneys Weller and Ray volunteered. Judge DiPentima asked for a report at the next meeting. No further action was necessary at this time.

II. New Business

A. Proposal that new §§ 77-3 and 77-4 be adopted to govern procedure for receiving and ruling on requests that documents in Supreme and Appellate Court files be sealed

The committee members reviewed and discussed the working draft of the new rules. Judge Sheldon, through Judge DiPentima, noted that there were additional areas of concern, especially with regard to public hearings on motions to seal and the proposed timeline of five business days, and that additional work was needed.

Attorneys Ray and Babbin inquired as to whether the documents could be filed electronically but coded in a manner that would keep them from being viewed by the public, as lodging paper documents with the clerk seemed to be a step backward from electronic filing. Attorney Hartan explained that the electronic filing system could not accommodate that presently. Attorney Calibey questioned whether a rule change was necessary to address the very few situations a request to seal could arise on appeal in the first instance. Judge DiPentima and Attorney Porter noted that there had been recent examples.

This matter was tabled for further discussion at the next meeting. Attorney Hartan would welcome further input from members of the committee via e-mail.

B. Proposal that § 67-2 be amended to no longer require that copies of briefs and appendices be sent to trial judges

Attorney Weisfeld disagreed with this proposal and suggested that perhaps parties could e-mail briefs and appendices to the trial judges. Attorney Marks suggested that judges could perhaps receive notice when briefs were filed, as most documents are now available electronically. Attorney Hartan mentioned that changes to the e-filing system were forthcoming that would allow judges to subscribe to receive notices when any document was filed in an appeal. Justice Palmer suggested that the proposed revision be adopted, subject to reconsideration should the trial judges express opposition.

Attorney Horton moved to adopt the rule change. That motion was seconded by Attorney Calibey and passed unanimously.

C. Proposals that §§ 62-6, 62-7, 66-1, 66-3 and 72-3 be amended as to manners of signature and certification. Proposal that section 63-4 be amended to add the defendant's convictions and sentence.

Attorney Hartan indicated that most of these proposals should be tabled until a future meeting so that additional changes could be made to address concerns that arose after the proposal was submitted.

The committee considered the proposal with respect to section 62-6. There was little discussion. Attorney Horton moved to adopt the amendment. That motion was seconded by Attorney Porter and passed unanimously.

Attorney Ziogas explained the proposal with respect to section 63-4. Attorney Horton moved to adopt the amendment. That motion was seconded by Attorney Porter and passed unanimously.

D. Discussion as to whether § 67-8 (b) (1) should be amended to no longer require that appellant furnish a judgment file

Attorney Horton had initially proposed this amendment, but indicated that his concerns regarding the difficulty of obtaining a signed judgment file from the clerks of the superior court had not materialized. Attorneys DeMeo and Porter suggested that judgment files were helpful to the court.

An alternative amendment was proposed to address the language that previously had been eliminated from section 63-4 concerning those matters for which no signed judgment file was necessary. Specifically, it was suggested that the following language be added to section 67-8 (b) (1).

"A signed judgment file is not required in the following noncriminal matters: habeas corpus matters based on criminal convictions; pre- and postjudgment orders in matters claiming dissolution of marriage, legal separation or annulment; prejudgment remedies under chapter 903a of the General Statutes; and actions of foreclosure of title to real property."

In addition, Attorney DeMeo will determine whether a proposal should be sent to the rules committee of the superior court to amend section 6-3 consistent with this amendment.

Attorney Horton moved to adopt the alternative amendment. That motion was seconded by Attorney DeMeo and passed unanimously.

E. Discussion re Attorney Horton's suggestion that "uninvolved attorneys" be removed from case

Attorney Horton explained the difficulty that appellants and appellees encountered when, for example, they needed consent from the other parties to request an extension of time, including parties who were nominally appellees but were not involved in the appeal. There was some discussion as to who would determine whether a party was "uninvolved."

Attorney Ziogas suggested that a rule could be crafted that would allow appellants to file a motion, certified to all parties, seeking permission to cease sending notice etc. to uninvolved parties. Parties who wished to receive notice, despite the fact that they were otherwise uninvolved in the appeal, could object. Attorney Babbin suggested that the rule also allow parties to opt out of receiving further notice—that is, to identify themselves as uninvolved in the appeal.

Attorney Ziogas agreed to draft a proposed rule that would be placed on the agenda for the next meeting.

III. Any other business that may come before the committee

Attorney Emmanuel discussed his concern with respect to the e-mail notice that parties receive before a decision is released on the judicial branch website. Previously, when notices were sent by post card, the notice revealed the disposition of the appeal before the decision was published in the Law Journal. He stated that knowing the disposition through the e-mail notices would be helpful to attorneys who had to, for example, arrange to meet with incarcerated clients.

Attorney Smith explained that the e-mail notices were a courtesy, as the applicable statutes and rules of practice stated that notice of the decision was publication in the Law Journal. He further explained that it was at the direction of the chief justice that only the trial judge receives advance notice of the disposition of the appeal.

Justice Palmer explained that the court's concern was letting the parties—and consequently, the public—know the disposition of a high profile appeal, without the benefit of the decision articulating the reason for that disposition.

Attorney Babbin stated knowing the disposition without the benefit of the decision would not be helpful to him in practice. He noted that federal courts, for example, the second circuit court of appeals, send courtesy notice simultaneously with the release of the decision on the website. He would maintain the current system.

Attorney Smith indicated that his office was prepared to include the disposition of the appeal in the e-mail notices, should the court so wish it.

The matter was tabled for further discussion at the next meeting.

IV. Next meeting.

The date of the next meeting was left to the discretion of the chairs.