

ADVISORY COMMITTEE ON APPELLATE RULES

February 8, 2007

The meeting was called to order by Justice Norcott at 3:00 p.m. The following individuals were in attendance:

Justice Flemming Norcott, co-chair
Chief Judge Joseph Flynn, co-chair
Attorney Michele Angers
Attorney Jill Begemann
Attorney John DeMeo
Attorney William Gallagher
Attorney Wesley Horton
Attorney Sheila Huddleston
Attorney Kevin Loftus
Attorney Susan Marks
Hon. Eliot Prescott
Attorney Carolyn Querijero
Attorney Charles Ray
Attorney Holly Sellers
Attorney Giovanna Weller

I. OLD BUSINESS

(a) *Minutes of October 31, 2006 meeting.*

The minutes were approved as distributed.

(b) *Minutes of December 18, 2006 meeting.*

The minutes were approved as distributed.

(f) *Proposal by Attorney Wesley Horton concerning Practice Book §63-3 (Filing of Appeal in General; Number of Copies).*

Attorney Horton spoke to the proposal to amend rule 63-3 by describing, as an example, a Stamford case transferred to the Regional Family Trial Docket sitting in Middletown. The proposed amendment is designed to clarify which is the court location to file the appeal form by providing that either is acceptable. Attorney Angers pointed out that the file is in only one location, and that is the location where all filings - including the appeal - should be filed. After discussion, the following

language was proposed as a new last sentence of the first paragraph: For purposes of this rule, trial court means the court that issued the judgment from which the appeal is being taken.

(d) *Proposal by Attorney William Gallagher authorizing filing by fax of motions for extension of time.*

Attorney Angers provided information about the volume of motions for extension of time in the Supreme and Appellate Courts. For calendar year 2006, there were 943 and 4,727 motions, respectively. Attorney Gallagher clarified that this proposal refers to fax filing, and not electronic filing. This motion was proposed as the rules do not require copies to be filed, as with other motions, lessening the potential burden on the clerks office to make copies. Based on Attorney Angers' discussion with trial courts where fax filing is permitted, the response has generally been positive.

At this point the logistics and cost of implementation need to be explored. Justice Norcott asked that the item be carried over to the next agenda, and that additional information be included in a memo for distribution to the Committee with that agenda.

(e) *Proposal from Attorney Richard P. Weinstein regarding preargument settlement program and vacating of trial court judgments.*

Attorney DeMeo reported on a meeting held with Justice Santaniello to discuss this proposal. Justice Santaniello is not in favor of amending the rule. Rather, he suggests that the manner in which PAC judges handle these matters would better address the issues raised in the proposal. Following discussion, the committee agreed that the proposal by Attorney Weinstein could adversely affect the PAC program. Attorney DeMeo will follow up with Justice Santaniello to further discuss his suggested alternative to this proposal. Two articles were copied and distributed to Committee members (copy attached to these minutes) which relate to settlement at the appellate level, and vacatur for mootness.

Discussion addressed the continuing availability of orders following vacatur, and the precedential value of Superior Court cases. Judge Flynn noted the case of Private Healthcare Systems, Inc. v. Torres, 278 Conn. 291 (2006) involved a vacatur of the Appellate Court's judgment in a case that had been rendered

moot. Justice Norcott suggested that this proposal be carried over to the next agenda to permit members an opportunity to review the articles and case mentioned during the discussion, as well as to permit time for Attorney DeMeo to follow up with Justice Santaniello.

(c) Continued discussion of recommendations of the Public Access Task Force; showing of video by the Connecticut Television Network demonstrating use of cameras in courtroom.

The Committee viewed a portion of the DVD prepared for the Supreme Court by CT-N which demonstrates the interim protocol adopted by the Court. The Committee then discussed the operation of the interim protocol, especially as it relates to any proposal to amend the rules governing coverage of court proceedings. The following issues were discussed: location of camera; number of cameras; prohibition on photographing or videotaping audience; prohibition on photographing / videotaping notes or papers; and robotic cameras. Judge Flynn inquired whether the camera would pan the audience with the new protocol. Mr. Paul Giguere, President and CEO of CT-N, indicated that although this is possible, the camera typically stays with the speaker. Justice Norcott indicated that under the interim protocol, the audience is not to be panned.

Chief Judge Flynn asked Mr. Paul Giguere to describe his organization. Mr. Giguere explained that CT-N is a public access network with a \$2.1 million operating budget funded through a revenue intercept from the gross receipts tax. In response to further questions, he stated that CT-N supports a change in the rules that would permit more than one camera in the courtroom. CT-N does not edit footage that is aired, nor do they license to other media. They have acted as the pool representative when more than one media outlet seeks to cover a case. They will provide copies as permitted under their contract, but the copyright is held by the state under the terms of current and prior contracts. Judge Flynn inquired whether, once this material is in the public domain, there is any further protection to prevent its dissemination for improper commercial syndication purposes. Mr. Giguere said he did not know as this has not been tested. Mr. Giguere further stated that the only restriction in the contract is that copies cannot be used for political partisan purposes.

Further discussion questioned what is meant by the term "informational graphics". That term is not defined, but - for legislative matters - CT-N draws from a glossary of terms

provided by the legislature to inform the viewers about jargon that may be used. If asked, they would work with the Judicial Branch to develop a similar guide.

CT-N does tape the entire argument and airs the argument intact with no editing. It was acknowledged, however, that even though CT-N airs the entire argument, once it is provided to other news organizations, such as WFSB, that entity can show just a clip of the proceedings. CT-N follows the speaker for taping and viewing, and does not include 'reaction shots' per their contract. This is, in fact, a standard provision in other state public access contracts as well. They have not submitted a request for funding to increase resources to cover the courts, but would consider doing so if the rule was changed to permit more than one camera. The other provision in the current rule that is onerous is the paperwork to seek permission to videotape an argument and to notify counsel of the request.

Justice Norcott asked the members if they were ready to move forward with drafting a rule consistent with recommendation #29 of the Public Access Task Force as endorsed by Justice Borden. He noted that the Supreme Court did ask for the Committee to incorporate exceptions for certain classes of case - notably sexual assault and cases involving children. Attorney Horton stated that he agrees with Justice Borden's December 6, 2006 letter, and the direction the Committee seems to be moving in, which proscribes taping the audience, addresses concerns about victims and children, and seeks to add more cameras. He asked about the Appellate Court courtroom and how cameras could be set up to avoid videotaping or photographing the audience. Discussion of the types of cases that should not be covered addressed sexual assault cases, family cases involving children, risk of injury cases, and trade secrets. It was suggested that juvenile proceedings be added to this list, as they are closed at the trial level. It was pointed out, however, that although juvenile proceedings are closed at the trial level, they are not closed at the appellate level, even though these proceedings cannot be broadcast. In this regard, Judge Flynn stated that the Appellate Court has never closed the courtroom during an appellate argument. Judge Flynn also emphasized that there was a strong policy reason behind the rape shield identity statute and the current exceptions to Practice Book § 70-10.

Committee members questioned whether a distinction is - or should be - made between mediums, such as video or audio taping argument. Judge Flynn pointed out that in certain types of cases, oral argument can be very graphic. With that in mind, at

his request, a copy of a transcript from an appeal in a sexual assault case will be distributed to Committee members. Judge Flynn asked the committee members to consider, after reviewing this transcript, whether streaming video should have been permitted in this case. A question was also raised as to who would decide which cases are or are not to be broadcast, which is a separate issue than those cases where the courtroom is closed. A suggestion was made to eliminate the blanket exceptions, but add a provision giving the Chief Justice or the Chief Judge the discretion to refuse coverage on a particular case.

A review of materials provided to Committee members reveals that a number of states allow all cases to be covered, with provision for a request by parties, or the court itself, that a case not be covered. The logistics of implementation of this type of rule were acknowledged and saved for future discussion. Committee members considered establishing subcommittees to address the various rules; Justice Norcott asked that members forward issues by e-mail to Attorney Angers or Attorney Sellers. At this juncture, members agreed that the position identified in Justice Borden's December 6, 2006 letter would be the starting point for the Committee. A proposal submitted by CT-N will also be forwarded to Committee members. Justice Norcott asked that the Committee be ready to move forward in three weeks.

II. NEW BUSINESS

(b) *Proposal by Attorney Wesley Horton concerning Practice Book § 67-7 (The Amicus Curiae Brief)*

Attorney Horton explained that this proposal is designed to remind out-of-state attorneys admitted *pro hac vice*, who are not familiar with Connecticut Appellate Practice, of the briefing requirements of the Practice Book, notably § 66-2. Attorney Charles pointed out that there is already a reference in the rule. Attorney Angers was asked to draft a clarification to the rule for the next meeting.

(c) *Proposal by Staff Attorneys' Office concerning Practice Book § 63-1 (Time to Appeal)*

Attorney DeMeo stated that this proposal is designed to clarify that where a statutory appeal period applies, the new appeal period will be that provided by statute, and not the twenty day period that would otherwise apply. He further noted that subsection (c)(1) defers to the statute. Attorney Horton

questioned whether a conflict would be created between the statute and the rule. The Staff Attorneys' Office will provide additional information regarding this proposal for a future agenda.

(a) *Procedures for Implementation of Public Access Task Force Open Meeting Recommendations*

Attorney Sellers summarized information about implementation of the Task Force recommendations concerning open meetings endorsed by Justice Borden as they relate to this Committee. Briefly, she noted that information about this and other committees is now posted in the Judicial Branch web site. Agendas and minutes will be posted for each committee along with membership and such other information as appropriate.

The meeting adjourned at 4:30.