

ADVISORY COMMITTEE ON APPELLATE RULES
February 24, 2010

The meeting was called to order by Justice Vertefeuille at 2:10 p.m. in the Attorneys Conference Room of the Supreme Court. The following Committee members were in attendance:

Justice Christine Vertefeuille, co-chair
Chief Judge Joseph Flynn, co-chair
Attorney Michele Angers
Attorney William Gallagher
Attorney Gail Giesen
Attorney Wesley Horton
Attorney Sheila Huddleston
Attorney Susan Marks
Attorney Thomas Smith
Hon. Eliot Prescott
Attorney Carolyn Querijero
Attorney Charles Ray
Attorney Holly Sellers
Attorney Martin Zeldis

Also in attendance were:

Attorney Jill Begemann
Attorney Lori Petruzzelli

I. OLD BUSINESS

a) *Minutes of June 16, 2009 meeting*

A motion to accept the minutes as distributed made by Attorney Horton, seconded by Attorney Querijero, was unanimously approved

(b) *Appeal form changes*

Justice Vertefeuille invited Attorney Angers to speak to the proposed changes to the Judicial Branch appeal forms JD-SC-28 (civil) and JD-SC-29 (criminal). Attorney Angers stated that the revisions incorporate suggestions from the CBA Appellate Advocacy Committee as well as changes due to the rewrite of the appellate case management system. She invited Committee members to provide her with comments for consideration as the form is readied for final revision.

(c) Amendment to rule by Appellate Advocacy Committee concerning motions that are sent to trial court - § 66-2

Justice Vertefeuille asked Attorney Huddleston to summarize this proposal. Attorney Huddleston stated that the proposal is intended to clarify the requirements for formatting motions submitted to the Supreme or Appellate Court that will be acted on by the trial court. Specifically, the revision provides that no proposed order is required unless the motion is directed to the trial court and that the appellate clerk transmits the motion to the trial judge. A style edit was suggested by Attorney Petruzzelli to change "paragraph" to "subsection" in section (a). On a motion to adopt the changes, made by Attorney Horton and seconded by Attorney Marks, the proposals passed unanimously.

Attorney Angers distributed proposals to the Committee, the first of which suggested a change to § 64-1(b) to add the language "an original and three copies." Upon motion by Attorney Horton, seconded by Attorney Huddleston, the proposal passed unanimously.

II. NEW BUSINESS

(a) Proposed amendments to rule concerning format and copies - § 67-2 (one amendment suggested by Appellate Advocacy Committee and one amendment suggested by Reporter of Judicial Decisions)

The Committee first addressed the amendment suggested by the Appellate Advocacy Committee and, upon motion by Attorney Horton, seconded by Attorney Huddleston, the proposal passed unanimously. Attorney Smith introduced the second proposal, explaining that the suggested changes are in keeping with the current practice to solicit e-mail addresses of counsel. Attorney Horton moved for acceptance of this proposal, which was seconded by Attorney Querijero and passed unanimously. Note: A further amendment to § 67-2 was later approved. See subsection II (i) of these Minutes.

(b) Proposed amendments by Attorney Angers to § 63-3 ("Filing of Appeal; Number of Copies") and discussion of implementation of recently adopted amendments to § 63-3

Justice Vertefeuille asked Attorney Angers to speak to this proposal. Attorney Angers stated that e-filing in civil cases

affects a small number of appeals, estimated at 150 per year. The proposal seeks to bridge the difference between trial court practice, where e-filing now is mandatory in most civil cases, and appellate practice where e-filing is not yet required.

A discussion ensued addressing mandatory e-filing. Chief Judge Flynn clarified that the appellate rules do not require e-filing, and so the proposal is to address the change in the trial court rules in a manner consistent with appellate practice. Attorney Huddleston suggested a change in the wording in the fourth paragraph to clarify what exactly must be served on whom. Attorney Giesen will draft and circulate language that splits one sentence into two to clarify the service requirements. Attorney Sellers suggested language in the first sentence that would acknowledge the future expansion of e-filing in civil cases.

Attorney Horton moved for adoption of the proposal as amended, which motion was seconded by Attorney Gallagher and unanimously passed. Attorney Gallagher asked about the timing of the adoption of the rule. Justice Vertefeuille and Chief Judge Flynn stated they would bring this rule to the attention of their respective courts.

(c) Discussion of § 67-7 ("The Amicus Curiae Brief")

Justice Vertefeuille explained that this proposal, for discussion only, is requested by the Chief Justice to address whether the rules should be amended to provide that justices and judges are not recused based solely on the fact that an attorney has filed an amicus curiae brief. Specifically, in light of the Supreme Court's en banc policy, the Court is focused on the role of amici in submitting briefs addressed to issues, but not as to the parties in controversy. Attorney Horton agreed that the distinction is well-founded. Chief Judge Flynn suggested that any rule should be consistent for both appellate level courts. Attorney Gallagher inquired as to the practice of the U.S. Supreme Court and other states. Justice Vertefeuille replied that it is her understanding that U.S. Supreme Court justices do not disqualify on those grounds, but that the practice in other states has not yet been researched. Attorney Huddleston questioned whether such a proposal should be addressed in the Code of Judicial Conduct rather than the appellate rules. Attorney Ray agreed with the concept and echoed Attorney Huddleston's suggestion. It was pointed out, however, that the drafters of the Code previously indicated that since this

proposal concerns only Supreme Court justices and Appellate Court judges, and the Code applies to all judges, it was not a matter for the Code of Judicial Conduct.

It was noted that although amici may file briefs in trial court matters, the practice is much more common at the appellate level. Justice Vertefeuille asked Attorney Giesen to research other states' practices and to specifically inquire about the placement of any provision - that is, whether it is in a statute, rule, or code.

(d) Proposed amendment by Attorney Horton to § 67-6 ("Statutory (§ 53a-46b) Review of Death Sentences") to conform to existing legislation and case law

Attorney Horton withdrew this proposal.

(e) Proposed amendment by Attorney Ray to § 67-3 ("Page Limitations; Time for Filing Briefs")

Attorney Ray summarized the proposal as a clarification that delivery of the paper transcript controls the timing of any filing that is based thereon. Attorney Angers suggested the proposal be placed as a separate second paragraph to emphasize the importance of this provision. Attorney Horton moved for adoption of the proposal as amended. Attorney Gallagher seconded the motion and the proposal as amended passed unanimously.

(f) Proposed amendment by Reporter of Judicial Decisions to § 71-4 ("Opinions; Rescripts; Notice; Official Release Date")

Attorney Smith explained that the rationale for the proposal is to emphasize that the official release date is the operative date for the timing of any filing, and not the date of any other notice, such as e-mail, that may be provided. Attorney Horton moved adoption, which was seconded by Attorney Giesen. The proposal passed unanimously.

(g) Proposed repeal of § 61-4 ("Appeal of Judgment That Disposes of at Least One Cause of Action While Not Disposing of Either (1) An Entire Complaint, Counterclaim or Cross Complaint, or (2) All the Causes of Action in a Pleading Brought by or against a Party")

Justice Vertefeuille introduced this proposal as requested by the Chief Justice, who had suggested that this rule might allow for an appeal that is not provided for in the statutes.

Chief Judge Flynn expressed his opinion that the rule does permit an interlocutory appeal that is not allowed by statute. Discussion focused on the source and scope of statutory authority for the rule, the use of General Statutes §52-265a, and interpretation of *State v. Curcio*, 191 Conn. 27 (1983). The Committee did not agree as to whether this rule falls within the scope of *Curcio*, or whether the rule exceeds statutory authority for the exercise of jurisdiction in these matters. Several members stated that they have found this section useful in certain appeal situations and would be reluctant to repeal it. Justice Vertefeuille concluded the discussion by thanking the Committee for its thoughtful comments, which she will bring back to the Court.

h) Proposed amendment to § 70-7 ("Consideration En Banc and Reargument En Banc")

Justice Vertefeuille explained that this technical amendment updates the language of the rule to reflect newer court technology. Upon motion made by Attorney Horton and seconded by Attorney Ray, the proposal unanimously passed.

(i) Proposed amendments by Attorney Schellenberg to various rules

This six part proposal was discussed and addressed as follows:

Parts one and three, addressing issues related to electronic filing and transfer of trial court matters, respectively, are referred to the Appellate Advocacy Committee for comment.

Parts two and four, addressing endorsement of the appeal form, have already been addressed.

Upon motion made by Attorney Horton and seconded by Justice Vertefeuille, the Committee unanimously approved parts five and six, addressing, respectively, security for costs in § 72-2 and certification of service in § 72-3. Both of these sections deal with writs of error.

The Committee then returned to the proposals submitted by Attorney Angers earlier in the meeting. A proposal to amend certain rules in chapter 67 (Briefs) to mandate inclusion of a table of contents in each brief filed with the courts will go over for further discussion. A proposal to repeat the language of § 70-4 that states that oral argument is not permitted for

parties not filing briefs, in § 67-2, was moved for adoption by Attorney Horton, seconded by Attorney Querijero, and passed unanimously.

III. NEXT MEETING

A date for the next meeting was set for Wednesday, March 31, 2010 at 2:00 p.m. in the Attorneys' Conference Room of the Supreme Court. Upon motion by Chief Judge Flynn, seconded by Justice Vertefeuille, the meeting adjourned at 3:30 p.m.