

ADVISORY COMMITTEE ON APPELLATE RULES
March 31, 2010

The meeting was called to order by Justice Vertefeuille at 2:00 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 Alexandra DiPentima, co-chair
Attorney Michele Angers
Attorney Kenneth Bartschi
Attorney Gail Giesen
Attorney Sheila Huddleston
Attorney Susan Marks
Attorney Thomas Smith
Hon. Eliot Prescott
Attorney Carolyn Querijero
Attorney Holly Sellers
Professor Colin Tait
Attorney Giovanna Weller
Attorney Martin Zeldis

Also in attendance was:

Attorney Jill Begemann

I. OLD BUSINESS

(a) Minutes from February 24, 2010 meeting

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

(b) Table of contents in briefs

Justice Vertefeuille invited Attorney Angers to speak to this proposal. Attorney Angers reiterated that there is currently no requirement that a brief include a table of contents. Discussion addressed the usefulness of a table of contents in lengthier briefs. It was also noted that a table of contents is not always needed, and could have the unintended effect of causing a non-compliant brief to be rejected. By consensus, the Committee agreed to recommend the addition of the words "if any" to Secs. 67-4 (g) and 67-5 (h). Attorney Giesen will draft commentary that encourages inclusion of a table of contents in longer briefs.

(c) *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 reported that there was a consensus to leave the rule as is.

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

Justice Vertefeuille asked Attorneys Giesen and Angers to report on responses to their research on other state practices. Both stated that there were no rules such as the one under discussion here. If there are policies in other states they are not expressed by rule. Attorney Huddleston suggested such an amendment would be more properly addressed by a rule on motions to disqualify.

Discussion of the proposal included whether it would also pertain to Superior Court matters and whether it is more properly addressed as an amendment to the Canon of Judicial Conduct. There are few motions to disqualify, and disclosure letters are not common. Justice Vertefeuille will bring the discussion back to the Court for their information.

II. NEW BUSINESS

(a) *Proposed amendment to § 70-7 ("Consideration En Banc and Reargument En Banc") to reflect en banc policy of Supreme Court*

Attorney Giesen pointed out that the en banc policy applies to the Supreme Court only. Attorney Weller questioned retroactive application of the rule since the policy was implemented at the beginning of the Court year. Sec. 86-2 governs amendments to rules, and includes a provision incorporating Sec. 60-1, Rules to be Liberally Interpreted. Attorney Smith added that a note is included in case headnotes indicating whether a case was argued before the new policy went into effect.

Attorney Huddleston stated that, where a justice or judge is added to a panel after oral argument, the bar prefers that new argument be permitted to provide an opportunity for the

additional judge(s) to question counsel on the appeal. Chief Judge DiPentima stated that is the current practice in the Appellate Court. Justice Vertefeuille pointed out that addition of a judge is not likely under the new policy, other than where the Court is evenly divided.

A proposed amendment indicating that the rule applies only to the Appellate Court was approved by consensus.

(b) Proposed amendment to § 63-3 ("Filing of Appeal; Number of Copies")

Justice Vertefeuille noted that this proposal is from Judge Flynn and relates to attempts to expedite juvenile appeals. Chief Judge DiPentima described the committee study looking at child protection appeals. Attorney Huddleston noted that it may be difficult for appointed counsel to always get the first hand signature in time.

Discussion raised the reason for the proposal, and possible unintended consequences. The committee agreed to put the matter over for the next agenda. Chief Judge DiPentima will get more information about the proposal from the juvenile appeals study committee; Attorney Huddleston will seek input from the bar, and asks that the possibility of a separate rule governing juvenile appeals be considered as well. Attorney Angers added a separate juvenile appeal form may also be advisable.

(c) Discussion item - continuation of automatic orders in family cases during the pendency of an appeal

Justice Vertefeuille explained that this proposal, for discussion only, is requested by Judge Munro and is addressed to the problem of dissipating assets during the pendency of the appeal. Attorney Huddleston stated her understanding that family financial orders are inter-related, and the stay potentially bifurcates matters which had previously been addressed more holistically. She agrees that there is a need for a special rule for stays in family matters.

Attorney Bartschi noted that a committee has begun discussing this issue as part of a larger discussion of stay of proceedings to carry out a judgment. Dissipation of assets is truly an issue, and continuation of automatic orders pending appeal may help. He is concerned that placement exclusively in the appellate rules may not be as apparent as inclusion in the

trial court family rules.

Justice Vertefeuille will share the committee's discussion with Judge Munro.

III. NEXT MEETING

A date for the next meeting was set for Thursday, May 20, 2010 at 2:00 p.m. in the Attorneys' Conference Room of the Supreme Court. Upon motion by Chief Judge DiPentima, seconded by Justice Vertefeuille, the meeting adjourned at 2:50 p.m.