

ADVISORY COMMITTEE ON APPELLATE RULES
MAY 11, 2011

The meeting was called to order by Justice Vertefeuille at 2:00 p.m. in the Attorneys Conference Room of the Supreme Court. The follow Committee members were in attendance:

Justice Christine Vertefeuille, co-chair
Chief Judge Alexandra DiPentima, co-chair
Attorney Michele Angers
Attorney Gregory D'Auria
Attorney Steven Ecker
Attorney Gail Giesen
Attorney Wesley Horton
Attorney Sheila Huddleston
Attorney Susan Marks
Attorney Charles Ray
Attorney Thomas Smith
Attorney Giovanna Weller
Attorney Martin Zeldis

Also in attendance were:

Judge Christine Keller
Attorney Jill Begemann
Attorney John DeMeo
Attorney Rich Loffredo
Attorney Lori Petruzzelli
Attorney Christine Rapillo
Attorney Carolyn Signorelli
Attorney Michael Taylor
Attorney Benjamin Zivyon

Justice Vertefeuille announced to the committee that Attorney William Gallagher had resigned from membership on the committee after many years of dedicated service. She also announced that Chief Justice Chase Rogers had appointed Attorney Steven Ecker as a member of the committee and she welcomed him.

I. OLD BUSINESS

(a) Minutes from February 22, 2011

Judge DiPentima noted one correction to be made on page one of the minutes to reflect that the official name of the committee appointed to develop ways to expedite

juvenile appeals is: Committee to Expedite Child Protection Appeals.

A motion to accept the minutes as distributed with the noted change was made by Attorney Horton, seconded by Attorney Marks, and was unanimously approved.

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

Further consideration on the proposed amendment to § 63-3 was postponed until the committee had the opportunity to discuss the proposal for adding a new Chapter 79 to the Practice Book regarding appeals in child protection matters.

Following the committee discussion on Chapter 79 later in the meeting, Judge DiPentima withdrew the proposal with respect to § 63-3.

(c) Proposed amendment to § 61-8 by Attorney Gallagher for obtaining extension of time to file cross appeal.

The memo proposed an amendment to § 61-8 to indicate that extensions of time for filing cross appeals may be filed with the appellate clerk. Further discussion regarding the proposal was tabled at the last meeting because Attorney Gallagher was unavailable to address the necessity of the proposed amendment. He was unable to attend this meeting as well. Attorney Horton stated again that he disagreed with the memo and suggested that the cross appeal be treated like the appeal. He indicated that the rule is sufficient as is and proposed that the rule stay the same. Attorney Angers agreed with Attorney Horton and there was no further discussion.

Attorney Horton moved not to accept Attorney Gallagher's proposal. The motion was seconded by Attorney Angers and passed unanimously.

(d) Proposal for amendment to § 61-10.

Attorney Huddleston submitted a report prepared by the Connecticut Bar Association's Appellate Advocacy Committee regarding the articulation process in Connecticut and a proposal to change § 61-10.

In summary, the report states that the existing articulation system should be overhauled because it often results in an unfair and inequitable finding that a party has forfeited a right to obtain appellate review for failure to seek an articulation from the trial court, there is a lack of certainty as to when articulation is needed, and the current system encourages trial judges to withhold the grounds for their decisions unless an articulation is requested. The proposed amendment to § 61-10 states that the failure to seek articulation shall not be grounds for the court to decline to review any issue or claim on appeal.

Judge DiPentima indicated that an informal gathering took place with some Appellate Court judges, Justice Vertefeuille, and certain appellate attorneys, several of whom are committee members, to discuss the reasons and need for changes to the articulation rules. Judge DiPentima stated that the Appellate Court judges were well

aware of the problems with the existing rule and were considering the advisability of a rule change.

Attorney Horton indicated that all of the appellate attorneys in attendance at that gathering were in favor of the rule change and that it would eliminate the majority of the motions for articulation that are currently filed.

The committee was presented with a letter from Judge Howard T. Owens, Jr., regarding the burden imposed on the trial judges with respect to motions for articulation. Justice Vertefeuille questioned whether the proposed draft of a new § 61-10 (b) should be altered to indicate that the trial judge has discretion to seek further briefing, argument, papers, etc. from the parties in order to provide an articulation.

Attorney Giesen questioned whether the rule change was necessary if the Appellate Court was aware of the problem, and also raised a concern with the wording in § 61-10 (b) that mandates certain action by the Appellate Court. Specifically, she questioned the use of mandatory language in the following portion of the proposal: "The failure of any party on appeal to seek articulation pursuant to Section 66-5 **shall not** be grounds for the court to decline to review any issue or claim on appeal." (Emphasis added.)

Justice Vertefeuille also stated feedback from the trial judges is warranted before the rule is changed, and suggested that the matter be referred to Justice Eveleigh as chair of the Rules Committee of the Superior Court, in order to get input from the members of the committee on behalf of the trial judges.

Attorney Horton moved that the committee refer the proposal to the Rules Committee of the Superior Court for consideration. After being seconded by Attorney Angers, the motion passed unanimously.

(e) Proposal for amendments to §§ 61-11, 61-12 and 25-5.

Attorney Kenneth Bartschi had submitted certain proposed amendments on behalf of the Connecticut Bar Association's Appellate Advocacy Committee to §§ 61-11 and 61-12 to clarify when an automatic stay is in effect in appeals from domestic relations cases, and to identify certain factors that family court judges should consider when deciding whether to terminate an automatic stay or to impose a discretionary stay.

Attorney Giesen informed the committee that, pursuant to Justice Vertefeuille's request, she and Attorney Bartschi had reviewed the stay rules to eliminate any redundancies for review by the co-chairs. She indicated that there were no substantive problems, and that the structural issues were addressed by moving certain parts of § 61-11 (b) into subsection (c) in order to make it flow better. Attorney Horton said that Attorney Bartschi was not available to attend the meeting today but indicated that he was in agreement with Attorney Giesen. Attorney Huddleston stated that the structural changes were an improvement.

Attorney Ecker inquired if there was still an opportunity for substantive discussion with respect to the proposed rule changes and Justice Vertefeuille indicated that the issue was open for discussion. Attorney Ecker raised a concern that in domestic relations cases where the trial court has gone to great lengths to draft its "mosaic of orders," the rule change seems to favor lifting stays, which can have a detrimental effect

on property distribution as there is no provision for security. He also questioned whether the mere reference to § 25-5 was sufficient. Attorney Huddleston indicated that the Family Law Commission and the CBA's Appellate Advocacy Committee strongly recommended approval of the proposal, but that there was problem with the wording of § 63-11 (c) that needed to be worked out with input from Attorney Bartschi.

Justice Vertefeuille suggested that further discussions be tabled because Attorney Bartschi was unavailable to address the proposed amendments in more detail with respect to the issues raised by Attorneys Ecker and Huddleston, and the matter was marked over to the next meeting, with the hope that Attorney Bartschi would be able to attend.

II. NEW BUSINESS

(a) Recommendation by the Civil Commission for the adoption of a rule change that would eliminate the requirement that a judgment file be prepared in appeals from judgments in most civil cases.

The committee was presented with a letter from Judge Linda Lager, chair of the Civil Commission, requesting that the committee consider adopting such a rule because the Civil Commission members agreed that a judgment file is not necessary for appellate review in most civil cases and that the requirement of preparing a judgment file is an onerous burden on the parties.

Attorney Horton recognized the responsibility of counsel to prepare a judgment file, but indicated that it is a waste of time in most cases because trial clerks often throw it out and draft their own judgment file.

Attorney Angers stated that the judgment file is used by the Appellate Clerk's Office. The requirement of getting a draft judgment file from counsel when the appeal is filed was done to help the case move along and avoid delay once an appeal became ready. It was also Attorney Angers' understanding that the justices liked having the judgment files in the prepared records for reference.

Judge DiPentima stated that she uses the judgment file to check the accuracy of the information in the case on appeal. Justice Vertefeuille also stated that the judgment file is important because it provides a brief summary of the case, including the disposition as to all of the parties below.

Attorney Huddleston stated that the judgment file helps keep track of all the parties that have been involved in the case over time, but questioned whether the rule should spell out exactly what needs to be included in the judgment file. Attorney Ecker agreed and raised the idea of having one judgment file form due to the fact that there are extreme variations between the trial courts with respect to the content and wording of the judgment file. Attorney Giesen stated that the requirement as to the contents of a judgment file are currently set forth in § 63-4 (a) (6).

Attorney Horton moved to reject the rule change to abolish the judgment file, seconded by Attorney Ray and passed unanimously.

(b) Proposal for new Chapter 79 (Appeals in Child Protection Matters)

Judge DiPentima addressed the committee with respect to the work done by the Committee to Expedite Child Protection Appeals in preparing the proposal to address and eliminate the lengthy delays in child protection appeals. As chair of that committee, Judge DiPentima wanted to acknowledge the hard work and efforts by all of the following committee members: Judge Joseph Flynn, Justice Dennis Eveleigh, Judge Christine Keller, Judge Francis Foley, Attorney Jill Begemann, Attorney Paul Hartan, Attorney Cynthia Cunningham, Attorney Benjamin Zivyon, Attorney Susan Pearlman, Attorney Michael Taylor, Attorney Christine Ghio, Attorney Carolyn Signorelli, Attorney Rich Loffredo and Attorney Michele Massores.

Attorney Smith asked Judge DiPentima if the intent of the committee in proposing the new Chapter 79 was to repeal the old Chapter 79 in its entirety, and Judge DiPentima indicated that was the intent. Attorneys Smith and Petruzzelli then explained to the committee that, in order to avoid confusion on the part of readers, the new chapter would be entitled Chapter 79a because the official Connecticut Practice Book does not reuse chapter numbers that have been repealed, and the book would contain commentary that Chapter 79 has been repealed.

Attorneys Horton and Ecker questioned whether several other sections of the practice book would have to be changed to reflect the procedures set forth in the proposed new chapter. Judge DiPentima said that she would ask the committee to look into the matter. She also noted that the Child Protection Attorney's role may be subsumed into the Public Defender Services this legislative session so that further changes to the rules may be necessary to reflect that change.

Attorney Angers proposed certain changes with respect to the following sections in Chapter 79: § 79-3 (b) and (d), § 79-4 (a), and § 79-7.

Attorney Smith proposed certain changes to § 79-11 with respect to the wording pertaining to the official release date of slip opinions in child protection appeals and making those opinions available to the parties by e-mail or regular mail.

Attorney Horton moved that the committee accept the new Chapter 79a as amended today, which motion was seconded by Attorney Ecker and passed unanimously.

(c) Justice Vertefeuille and Judge DiPentima informed the committee that there have been ongoing discussions with respect to e-filing and its use in the appellate system, and that the committee will have to consider the drafting of e-filing rules in the future.

(d) No other new matters were addressed by the committee.

III. NEXT MEETING

The next meeting will take place in the fall of 2011 at a date to be determined. Upon motion of Justice Vertefeuille, which was seconded by Judge DiPentima, the meeting adjourned at 3:30 p.m.