

ADVISORY COMMITTEE ON APPELLATE RULES

May 13, 2009

The meeting was called to order by Justice Vertefeuille at 2:05 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 Sheila Huddleston  
Attorney Kevin Loftus  
Attorney Susan Marks  
Hon. Eliot Prescott  
Attorney Carolyn Querijero  
Attorney Charles Ray  
Attorney Holly Sellers  
Attorney Martin Zeldis

Also in attendance were:

Attorney Jeffrey Babbin  
Attorney Tais Ericson  
Attorney Peg George

**I. OLD BUSINESS**

(a) *Minutes of October 28, 2008 meeting.*

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

(b) *Proposal by Attorneys Wesley Horton and Sheila Huddleston concerning Practice Book Sec. 63-3 (where appeals should be filed)*

Justice Vertefeuille asked Attorney Angers to provide an update on this proposal with specific reference to discussions between her office and Superior Court Operations. Attorney Angers provided the following synopsis:

It is possible to move forward with this proposal, with filings accepted at any Judicial District; exceptions would be

made for certain courts that accept JD filings, but are limited in their scope (e.g., housing). Due to statutory restrictions and confidentiality concerns, juvenile matters would not be included. In addition, for logistical reasons, it is likely that interlocutory and pre-judgment appeals would be excluded at first. Suggestions that e-services may be used to facilitate filing are well founded, but currently limited to civil matters. Discussion of operational policy to implement this proposal includes phone contact to assure immediacy of notice to the court where the matter is pending, and use of a verification form or log to document filing and confirm that information about the filing was complete for both courts (i.e., the court where the file resides and the court where the appeal was filed). Cash register issues have been identified but not yet resolved.

A discussion of the possible use of facsimile for initial court-to-court contact rather than telephone notice, concluded that use of facsimile filing is becoming obsolete in light of e-filing, and that the Judicial Branch is moving to other electronic means of transmission. Potential timing issues also favor immediate phone contact. Further discussion of interlocutory appeals noted that it is not always clear whether an appeal is from a final judgment.

Justice Vertefeuille noted that discussion of this proposal at the prior Committee meeting focused on transferred cases, especially those transferred to the complex litigation or regional family trial dockets. Representatives of Court Operations in attendance at the meeting stated that inclusion of family matters in the e-filing system, which would include the regional family docket, is three or more years from implementation. Justice Vertefeuille then suggested that the transfer issue should be the first step in developing a rule. Attorney Gallagher moved that a rule be drafted to address transferred cases as well as e-filing. The motion was seconded by Attorney Huddleston and passed unanimously.

*(c) Proposal to make the parties and/or their counsel responsible, along with the clerk of the trial court, for preparing a complete and accurate record to be forwarded to the AC or SC for cases on appeal*

Justice Vertefeuille invited Attorney Angers to update the Committee on this proposal. Attorney Angers responded that Court Operations has implemented a number of systemic improvements. She recommended that no rule be developed at this time in light

of those improvements and until their impact is known. This agenda item was then passed temporarily pending Chief Judge Flynn's arrival at the meeting.

(d) *Proposal to allow the filing of hyperlinked briefs*

Attorney Giesen spoke to this proposal and explained the two specific proposals that were submitted: one is based on a New York rule, which provides for "companion" briefs to be filed by any party and that the court may sua sponte order hyperlinked briefs; the second is based on the practice in California, which seeks one disc containing all briefs. No jurisdiction mandates filing of hyperlinked briefs.

Justice Vertefeuille asked about the expense of filing separate discs for each brief or one disc with all briefs. Attorney Ray responded that there is very little cost associated with the discs themselves, but that the expense is in the creation of the hyperlinks within the document. Discussion addressed the integrity of the documents, the expected benefit to the court and staff offices, and the potential benefit to the public if briefs become available online in hyperlinked form.

Specific discussion of the difference between the two proposals resulted in a consensus that an "all or nothing" approach should be taken to the filing of such briefs. Further discussion focused on the timing of notice of intent to file hyperlinked briefs, the procedure to be followed when one party is producing briefs for other parties, the timing of submission to the court, and whether the rule should begin with Supreme Court briefs only, as was done for the current e-brief rule. It was agreed that hyperlinked briefs should be submitted on one disc within 30 days after the filing of the last brief, with provision made for review and approval of a hyperlinked brief produced by a party who did not file the paper brief. The initial proposal will be for Supreme Court briefs only. Application of the rule to cases transferred from the Appellate Court to the Supreme Court after any or all briefs have been filed will be addressed in the transfer notice sent to parties and counsel by the clerk's office.

Justice Vertefeuille asked that the Committee return to item I.C., whereupon Attorney Angers reiterated her prior comments updating the status of this proposal. Chief Judge Flynn agreed that there have been improvements, but reiterated his concern with the impact that incomplete files / exhibits / records has on the work of the court. Attorney Gallagher asked

if the main concern is exhibits, and Chief Judge Flynn stated that that has been his experience. He added that the court does not necessarily want all exhibits transmitted to the chief clerk's office, especially those that are quite large, or potentially hazardous. Attorney Angers suggested that counsel 'sign off' on the list of exhibits. Attorney Huddleston added that a requirement could be added to Practice Book Sec. 63-4 (a). Chief Judge Flynn stated that a rule would assure compliance and make expectations clear. Attorney Marks added that it is the practice in her office to review exhibits when writing briefs. Chief Judge Flynn stated that the attorney should also assure that what is in their file, or referenced in their brief, is the same as what is on file with the court. Attorney Huddleston suggested adding a sentence to the rule to require attorneys to verify the exhibit list. Attorney Angers stated that the trial court exhibit list could be sent to the attorney to verify. Chief Judge Flynn asked that a proposal be drafted to the effect that a list of exhibits shall be transmitted to the appellate clerk so that office may send the list to appellate counsel for verification.

## **II. NEW BUSINESS**

### *(a) Policy on timing of rule changes*

Justice Vertefeuille informed the Committee that Chief Justice Rogers asked her for a time estimate for completing proposals. Chief Judge Flynn added that it is the goal to avoid issuing a supplement to the annual Practice Book and that this is accomplished by setting a cutoff date for action on proposals. Justice Vertefeuille suggested June 15th would be a reasonable date for proposals to come out of Committee. Attorney Marks moved to set June 15th as the cutoff date, which motion was seconded by Attorney Gallagher and unanimously approved by the Committee.

### *(b) Section 66-1 - minor change to add reference to § 10-14*

Attorneys Angers and Giesen stated that the addition of the reference was for clarity. A motion to adopt the proposal by Attorney Marks was seconded by Attorney Huddleston and unanimously passed by the Committee.

### *(c) Suggestions for Appellate Rules Amendments by the CBA Appellate Advocacy Committee.*

*(1) Filing of Appeals (Practice Book § 63-3)*

Attorney Giesen noted that this proposal replaces the word "forthwith" with a specific 10 day requirement. The Committee discussed timing and motions for extension of time. A motion to adopt the proposal as drafted was made by Attorney Huddleston, was seconded by Attorney Ray, and passed unanimously.

*(2) Appeal Form*

Attorney Angers reported that a revision of the appeal form is underway and is tied to the rewrite of the appellate case management system. Chief Judge Flynn moved to table this item; Attorney Ray seconded the motion and the motion to table passed unanimously.

*(3) Amended Appeals (Practice Book § 61-9)*

Attorney Giesen suggested that Attorney Babbin of the Appellate Advocacy Committee speak to this proposal. Attorney Babbin posited a hypothetical where an allegedly proper appeal needs to be amended based on subsequent activity in the underlying case and noted that if the appeal was defective, the initial appeal and the amended appeal will be dismissed. He mentioned that, in some cases, counsel are not sure whether they should amend an appeal or file a new appeal, and they might choose to pursue a motion to file a late appeal rather than amend the initial appeal. He suggests the issue is one of ambiguity.

The Committee discussed the proposal, with Chief Judge Flynn noting that there are potential jurisdictional issues implicated in this proposal. He acknowledged the possible ambiguity, but cautioned that the Committee needs to be sensitive to expanding jurisdiction by court rule. Attorney Loftus queried whether the issue included concern over payment for an additional appeal fee should the motion for late appeal be pursued. Chief Judge Flynn stated that the central issue is the jurisdictional one, and added that, if such a rule was adopted, he could see a challenge. He asked that more information be provided addressing whether this is a judicial enlargement of a statutory right. Reference was made to Federal Rule 54B. Attorney Huddleston volunteered to draft a memo on this proposal in light of existing court authority. Justice Vertefeuille asked that this item be carried over to the next Committee meeting agenda.

*(4) Motions that are Sent to Trial Court (§§ 66-5 and 61-11)*

Justice Vertefeuille asked Attorney Giesen to introduce this proposal. Attorney Giesen invited Attorney Babbin to comment, and he described the proposal as bringing clarity to practitioners regarding the proper format for motions filed in the appellate clerk's office which, by rule, will be forwarded to the trial court judge. Attorney Angers added that clarification would also serve to reduce returns for non-compliance. Attorney Ray moved that the rule require inclusion of both the appellate and trial court docket numbers. Attorney Huddleston suggested that the proposal should include the following language: "the motion shall identify the trial court judge or judges to whom the motion should be directed". Judge Prescott asked whether Practice Book Section 61-12 should be addressed as well. Attorney Babbin, working in conjunction with Attorney Giesen, will draft a revised proposal for civil matters and Attorney Marks will draft a corresponding rule for criminal matters. The proposals will be circulated by e-mail to Committee members.

*(5) Briefs (Practice Book §§ 67-4 and 67-5)*

Attorney Babbin stated that this proposal seeks to add a requirement that a statement of the relief being sought on appeal be included in the appellant's and appellee's briefs. Attorney Zeldis moved adoption of the proposal, which was seconded by Attorney Ray. The proposal was unanimously approved.

*(d) Letter from Commission on Child Protection proposing changes to rules pertaining to juvenile matters*

A letter proposing appellate rule changes pertaining to juvenile matters was submitted by the chief child protection attorney. The five proposals were discussed as follows:

*(1) Sec. 62-8. Names of Counsel; Appearance*

Discussion of this item questioned the need for this amendment in light of existing provisions in the rules pertaining to appearances of counsel in appellate matters. A motion to table was made by Chief Judge Flynn, seconded by Attorney Zeldis and passed unanimously.

*(2) Sec. 67-13. Briefs in Family and Juvenile Matters and Other Matters involving Minor Children*

Discussion of this proposal focused on the distinction that would be made between family and juvenile matters. The proposal was tabled for further discussion.

*(3) Sec. 66-1. Extensions of Time*

Concern was raised that a limitation on the ability of counsel to obtain extensions of time in juvenile appeals, except in an emergency, could affect the ability of counsel to take pro bono cases. There was also discussion of what might constitute an emergency under this proposal. Attorney Ray moved to table the proposal. The motion was seconded by Attorney Zeldis and unanimously approved.

*(4) Sec. 69-3. Time for Assignments; Order of Assignment*

Attorney Angers stated that it is the practice of both courts to assign juvenile appeals as expeditiously as possible. Counsel may also request that a matter be expedited if the circumstances of the matter so warrant. Attorney Huddleston moved to table this proposal. The motion was seconded by Attorney Angers and unanimously approved.

*(5) NEW Sec. 70a-1. Time to Render Decision in Appeals from Juvenile Court Matters*

This proposal would establish a time frame within which an opinion must be rendered. Discussion acknowledged that, similar to item (4) above, any party may request expedited handling of an appeal. Further, the court may issue a slip opinion in those appeals where time is of the essence when announcing the decision of the court. A motion to table was made by Attorney Huddleston, seconded by Attorney Loftus and unanimously approved.

**III. NEXT MEETING**

The date for the next meeting was set for Tuesday, June 16. The agenda will include items I.a., b. and c.

The meeting was adjourned by the co-chairs.