

ADVISORY COMMITTEE ON APPELLATE RULES
June 16, 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 Maureen Cox (for Atty. Weller)
Attorney William Gallagher
Attorney Gail Giesen
Attorney Wesley Horton
Attorney Sheila Huddleston
Attorney Kevin Loftus
Hon. Eliot Prescott
Attorney Carolyn Querijero
Attorney Charles Ray
Attorney Holly Sellers
Prof. Colin Tait
Attorney Martin Zeldis

Also in attendance were:

Attorney Thomas Smith
Attorney Lori Petruzzelli

I. OLD BUSINESS

Justice Vertefeuille opened the meeting by noting that Attorney Kevin Loftus, Reporter of Judicial Decisions and a member of the Committee, is attending his last meeting as he is retiring from state service this month. Attorney Loftus introduced Attorney Thomas Smith, Deputy Reporter of Judicial Decisions and Attorney Lori Petruzzelli, an Assistant Reporter, who will be handling matters relating to rules.

(a) *Minutes of May 13, 2009 meeting*

Justice Vertefeuille stated that the minutes will be circulated to members by e-mail when they are completed.

(b) *Sec. 63-3 - Proposal concerning where appeals should be filed*

Attorney Giesen distributed and reviewed a revision to this

proposal, which was distributed at the meeting. Discussion of the proposal addressed interlocutory appeals, juvenile matters, and coordination between appellate and trial court clerks' offices. Based on this discussion, the proposal, as distributed, was amended as follows: the word "as" was changed to "if" in the second line of the first paragraph; the words "filed with the clerk of the trial court" were deleted from the first line of the second paragraph; and the words "section 4-4 of the rules of practice" were substituted for "the trial court" in the sixth line of the third paragraph. Discussion of the commentary did not result in any changes thereto.

Upon motion to approve the proposal as amended made by Justice Vertefeuille, and seconded by Attorney Horton, the Committee unanimously approved the proposal as amended.

(c) Section 68-1 - 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 appellate clerk

Justice Vertefeuille asked Attorney Angers to review the status of this proposal. Attorney Angers stated that the overarching purpose of the amendment is to make clear the responsibility of counsel with regards to exhibits in cases on appeal.

Chief Judge Flynn moved adoption of the proposal, which was seconded by Attorney Horton. Attorney Angers questioned whether the term 'pro se' should be replaced by 'self represented party' in the rule. Attorney Loftus stated that, should the preferred language be adopted in this rule, similar changes should be made throughout the practice book. Attorney Horton moved that the phrase 'self represented litigant' be used as the preferred phrase, which was seconded by Attorney Ray. Attorney Loftus was asked to prepare revisions for the Supreme and Appellate Courts for September. Both motions passed unanimously. Attorney Loftus also asked for permission to make technical amendments to the appellate rules to eliminate references to "jury" in the plural, which was granted.

(d) New Section 66-2A - Proposal to allow the filing of hyperlinked briefs

Justice Vertefeuille stated that this most recent version of the proposal reflects the Committee discussion at the May, 2009 meeting. Attorney Querijero moved adoption, seconded by

Attorney Huddleston. The Committee discussed limiting applicability to briefs filed in the Supreme Court. An amendment to that effect was accepted by the movant as a friendly amendment. The proposal was adopted by unanimous vote of the Committee.

(e) Section 61-9 - Proposal concerning amended appeals

Justice Vertefeuille asked Attorney Giesen to review the latest version of this proposal. Attorney Giesen stated that language is based on Attorney Babbin's proposal and the prior discussion of the Committee regarding amended appeals and appeals that were defective when filed. A memo to the Committee from Attorney Giesen, dated June 3, 2009, provides more detailed analysis of the issues raised by this proposal. Attorney Horton moved adoption of the proposal, which was seconded by Professor Tait. The use of the phrase 'final judgment' in the proposal was discussed, and a friendly amendment was accepted to substitute the following language: "If, after an amended appeal is filed, the original appeal is dismissed for lack of ~~a final judgment jurisdiction~~, the amended appeal shall not be void as long as it was filed from ~~a final judgment~~ a judgment or order from which an original appeal could have been filed."

The committee unanimously approved the proposal as amended. Attorney Giesen was asked to revise the commentary accordingly, and to refer to cases discussed in the staff memo.

(f) Suggestions for Appellate Rules Amendments by the CBA Appellate Advocacy Committee

- (1) Appeal Form
- (2) Motions that are sent to trial court (Sections 66-5 and 61-11)

Upon motion by Justice Vertefeuille, seconded by Attorney Horton, these matters were deferred for discussion to the first meeting of the Committee in the Fall.

II. NEW BUSINESS

None at this time

III. NEXT MEETING

A date for the next meeting was not set. Upon motion by Chief Judge Flynn, seconded by Justice Vertefeuille, the meeting adjourned at 3:00 p.m.