

ADVISORY COMMITTEE ON APPELLATE RULES

June 23, 2008

The meeting was called to order by Justice Schaller at 2:00 p.m. The following committee members were in attendance:

Justice Barry Schaller, co-chair  
Chief Judge Joseph Flynn, co-chair  
Attorney William Gallagher  
Attorney Gail Giesen  
Attorney Paul Hartan  
Attorney Sheila Huddleston  
Attorney Kevin Loftus  
Attorney Carolyn Querijero  
Attorney Charles Ray  
Attorney Holly Sellers  
Professor Colin Tait  
Attorney Giovanna Weller  
Attorney Martin Zeldis

Also in attendance were:

Justice Peter Zarella  
Attorney Jill Begemann  
Attorney Dan Klau  
Mr. David Smail

**I. OLD BUSINESS**

*(c) Proposal by Attorney Wesley Horton concerning Practice Book § 63-3 (Filing of Appeal in General; Number of Copies); further proposal for § 63-3 by Attorney Sheila Huddleston*

Attorney Huddleston began the discussion by noting that the issue this proposal seeks to address is where to file the appeal when the trial court file has, for example, been transferred. A proposal to permit payment of the fee at any trial court location and filing the original appeal form at the appellate clerk's office was discussed. Outstanding issues following the discussion include: timing of fee waivers; notice to the trial court that an appeal has been filed; and motions for stay. In response to a suggestion that the trial court clerks' office could fax the form to the appellate clerk's office, concern was expressed that an additional burden was being placed on trial courts. Growing technology initiatives by the Judicial Branch

may give rise to solutions, but at this point e-filing is limited to civil and family cases. A motion to table the proposal for further discussion was made by Attorney Huddleston and seconded by Attorney Weller. The motion passed unanimously.

(a) *Minutes of January 24, 2008 meeting.*

Upon motion by Attorney Gallagher, seconded by Professor Tait, the minutes were unanimously approved.

(d) *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.*

Chief Judge Flynn introduced this item by noting that it had been discussed at the January meeting and tabled for further discussion. He asked for updates from staff offices, and Attorney Hartan spoke to a current joint project with Court Operations to address timely and complete delivery of exhibits. In addition, as suggested at the last meeting, there have been concerns with fax filing in trial courts which are being addressed by the Branch's e-filing and e-services technology initiatives. Further discussion of this item was tabled pending the presentation by Attorney Klau under agenda item I (e).

(b) *Proposal by Attorney William Gallagher authorizing filing by fax of motions for extension of time.*

Discussion addressed the possibility of fax filing as well as the possibility of using e-mail for limited purposes such as submitting motions for extension of time. Attorney Gallagher spoke to the expense to litigants of courier services, especially for those offices at a distance from Hartford. Justice Schaller presented a motion to instruct the Staff Attorney's office to prepare a draft proposal addressing e-mail with attachments or fax filing for limited purposes. Attorney Gallagher seconded the motion and it passed unanimously. Justice Schaller asked that Deputy Chief Court Administrator Carroll be consulted in the formulation of the proposal.

(e) *Proposal to allow electronic briefs in the appellate courts; presentation by Attorney Daniel Klau.*

Justice Schaller introduced the next agenda item by noting that the appellate case management system is currently being rewritten, and that e-filing will eventually be introduced for

appeals. Currently, the United State Supreme Court cooperates with the American Bar Association to provide public access to merits briefs. West Virginia and Texas have electronic briefing provisions as well. Attorney Giesen distributed copies of relevant web pages. Attorney Klau was then asked to present a demonstration, which included the U.S. Supreme Court cite linked to the ABA public education site, use of hyperlinks, and file formats used for submission and display of documents. Attorney Klau also distributed a model rule based on the 2d Circuit rule.

Committee discussion included the cost to attorneys, including software and the time to reformat briefs and other pleadings, the availability of transcripts in electronic format, the use of e-mail and attachments for filing, production of the record in electronic format, and resources needed to move forward with this proposal. Attorney Klau noted that the Appellate Advocacy section of the Connecticut Bar Association is interested in being included in the discussion in whatever manner might be deemed most useful. Justice Zarella, who joined the meeting for this agenda item, noted that the Connecticut State Library might also be interested in this proposal. Mr. David Smail, representing the Information Technology Division of the Judicial Branch, was asked to speak to some of the issues and cost associated with the proposal as thus far discussed. He raised document format, document management, and file storage capacity as three items that he suggests be considered. For example, there are free .pdf converters that could be used to mitigate costs.

Justice Schaller stated that it was his sense from the Committee that there is a consensus to proceed with discussion. To that end, the Committee co-chairs will appoint a committee that includes both representatives of the Appellate Rules Committee and other offices and agencies who may contribute to the discussion. Attorney Klau thanked the co-chairs and the committee for the opportunity to present information about electronic briefs, and offered his assistance with any future discussion.

## **II. NEW BUSINESS**

In light of postal delays in delivery of the Rules packet to members, Chief Judge Flynn suggested that most agenda items under new business be deferred to the next meeting. The Committee agreed with this suggestion.

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

Chief Judge Flynn requested that the Staff Attorneys Office draft a proposal based on CBA submission V, for the next Committee meeting. He asked if any other members had comments about the CBA proposals at this time, and Attorney Hartan noted the proposed revision to section 69-3 could include an added requirement that certification be provided to the client, similar to that required for a motion for extension of time. Justice Schaller asked that Attorney Hartan's suggestion be included in a draft for the next meeting as well.

(b) *Proposal regarding § 67-10 (Citation of Supplemental Authorities after Brief is Filed).*

Attorney Giesen moved adoption of this proposal, which was seconded by Professor Tait. Following discussion, the Committee agreed that the commentary to the rule should point out the correct usage of this rule for corrections of errors of a factual nature. Attorney Gallagher offered to draft suggested language which Attorney Giesen will circulate to the Committee members.

A motion to adjourn by Professor Tait was seconded by Attorney Gallagher and unanimously approved. The meeting adjourned at 3:40 p.m.