

Advisory Committee on Appellate Rules

October 2, 2017

The meeting was called to order by Justice Palmer at 10 a.m. in the Attorney Conference Room of the Supreme Court.

Members in Attendance:

Justice Richard N. Palmer, Co-Chair
Chief Judge Alexandra D. DiPentima, Co-Chair
Attorney Jeffrey Babbin
Attorney Colleen Barnett
Attorney John Cordani
(for Attorney Giovanna Weller)
Attorney John DeMeo
Attorney Richard Emanuel
Attorney Wesley Horton
Attorney Eric Levine
Attorney Susan Marks
Attorney Jamie Porter
Attorney Charles Ray
Attorney Jane Rosenberg
Attorney Lauren Weisfeld

Attorney Carolyn Ziogas

Members not in attendance:

Attorney Kathryn Calibey
Attorney Paul Hartan
Hon. Sheila Huddleston
Attorney Giovanna Weller

Additional Attendees:

Attorney Jill Begemann
Attorney David Goshdigian

Preliminary Matters

Justice Palmer welcomed Attorney Eric Levine, Reporter of Judicial Decisions, as a member of the committee.

I. Old Business.

A. Approval of minutes of June 19, 2017 meeting.

Referring to part I B of the minutes, Attorney DeMeo noted that he wished to clarify that it was his position that the writ of error should not be abolished. Any further discussion of writs of error was tabled for a future meeting.

The committee unanimously approved the minutes of the June 19, 2017 meeting.

B. Proposal to amend §§ 62-7 and 63-4 (a) (3) regarding parties not involved in the appeal.

In the proposal as to § 63-4 (a) (3), it was suggested that "the" appellant be changed to "an" appellant. There was a brief discussion as to whether these amendments would have an impact on the process of preargument conferences (PACs). It is not anticipated that these amendments will affect the PAC process. Attorney DeMeo indicated that he would explain the change to the PAC judges at their next meeting.

Attorney Horton moved to adopt the proposal. Attorney Babbin seconded. The motion passed unanimously.

C. Request that appellate briefing rules be amended as they apply to incarcerated self-represented parties

This proposal was submitted by Mr. Kacey Lewis and primarily sought to amend the rules to allow incarcerated self-represented parties to file handwritten motions, etc. Mr. Lewis has sent the same proposal to a state senator, judicial branch external affairs, and others. At the last meeting, Judge DiPentima explained how the court handles such requests on a case-by-case basis. It was decided that no rules would be amended at this time. A response to Mr. Lewis has already been sent on behalf of the committee.

D. Proposal to amend §§ 70-3 and 85-2 regarding failure to appear for oral argument

Justice Palmer noted that the proposal says "may"; that is, when a party fails to appear, the court may decide the case on the briefs, record, and oral argument of the appearing party, but that the court, in its discretion, also may order that argument be rescheduled.

Attorney Horton moved to adopt the proposal. Attorney Porter seconded. The motion passed unanimously.

E. Discussion re whether rules should be amended to address whether the filing of a writ of error operates to stay proceedings to enforce or carry out the judgment (see §§ 61-11 and 61-12)

Discussion of this matter was tabled until the next meeting and the matter has been referred to the work group.

F. Discussion regarding whether the rules should be amended to require a more comprehensive list of interested parties.

Justice McDonald had asked the committee to consider whether the rules should be amended to require a more comprehensive list of interested parties. After reviewing Attorney Porter's report from the work group concerning this issue, Justice Palmer indicated that he would report back to Justice McDonald and the matter was tabled.

II. New Business.

A. Proposal to amend §§ 60-1, 60-2, and 60-3 to clarify that these provisions will apply to appellate matters, including motions and petitions.

The words "appellate matter" replaced the words "appeal" or "case" in several rules. Attorney Horton moved to adopt the proposal. Attorney Ziogas seconded. The motion passed unanimously.

B. Proposal to amend § 67-2 to eliminate the requirement of filing the original brief and appendix with the copies and to no longer require that the parties send copies of briefs and appendices to the trial court.

Attorney Ziogas explained that the trial judges can now subscribe to the e-mail notice system and receive e-mail updates on selected cases. The updates include e-mail notices of the filing of briefs and appendices, which can then be viewed electronically. A related proposal (IIE) was then taken out of order:

E. Proposal to amend § 67-2 (g) regarding electronic filing of appendices.

Attorney Ken Bartschi submitted this proposal via e-mail indicating that although the rules do not expressly require electronically filed appendices to be uploaded separately from the briefs, the clerk's office requires separate uploads in order to address the problem

of improperly redacted personal identifying information in appendices. He submitted a proposed amendment to § 67-2 (g). After discussion, it was agreed that the proposal should be adopted, but that it should refer to "paper" copies, not "hard" copies.

Attorney Horton moved to adopt the proposed amendments to § 67-2, as amended. Attorney Babbin seconded. The motion passed unanimously.

C. Proposal to amend §§ 66-2 and 85-3 regarding what may be included in opposition papers.

Attorney Ziogas explained the proposed amendments. Attorney Babbin requested clarification as to what kind of request for affirmative relief was being precluded. Attorney Porter provided an example: in response to a motion to dismiss, an appellant cannot request relief in the form of permission to file a late appeal. Rather, such appellant must file a separate motion for permission to file a late appeal.

Attorney Horton moved to adopt the proposed amendments. Attorney DeMeo seconded. The motion passed unanimously.

D. Proposals concerning electronic access form and notice.

1. Proposed amendment defining notice.

The proposal as drafted suggested defining the term "Notice" in § 60-4. A revised proposal was circulated in which the proposed language was moved to subsection (f) of § 66-2 because only motions, petitions, and applications were affected by the proposal. Attorney Ray suggested that the second sentence of the proposal be revised to clarify that "It" referred to "The official notice date."

Attorney Horton moved to adopt the proposal, as amended, concerning § 66-2 (f). Attorney Ziogas seconded. The motion passed unanimously.

2. Proposal to amend § 60-7 to add a new subsection (c).

Attorney Ziogas explained that this new subsection was to further the goal of having self-represented parties participate in electronic notice via the appellate inbox unless they are exempt from the requirements of e-filing.

Attorney Horton moved to adopt the proposal. Attorney Porter seconded. The motion passed unanimously.

3. Proposal to delete certain language concerning notice that was redundant in light of § 66-2 (f).

It was noted that the language that was being deleted from § 71-4 (b) and (c) also resided in § 79a-11 and that, for the sake of consistency, the same language should be deleted in both places.

There was some discussion as to whether what is now § 71-4 (d) (what would be [b] after amendment) should be amended concerning what constituted "official opinions," as the Connecticut Law Journal is now being released online only. This matter was referred to the work group for further consideration and was not included in the proposal.

Attorney Horton moved to adopt the proposal concerning §§ 71-4 and 79a-11. Attorney Porter seconded. The motion passed unanimously.

III. Next meeting

The date of the next meeting was left to the discretion of the chairs. It is expected that the next meeting will occur in late April, 2018.

Closing Matters

The chairs recognized the contributions of the members of the appellate rules work group and thanked them for their hard work.

Respectfully submitted,

Colleen Barnett