

**Advisory Committee on Appellate Rules
November 25, 2014**

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

Justice Richard N. Palmer, Co-Chair
Chief Judge Alexandra D. DiPentima, Co-Chair
Judge Sheila Huddleston
Attorney Jeffrey Babbin
Attorney Kathryn Calibey
Attorney Gregory D'Auria
Attorney John DeMeo
Attorney Richard Emanuel
Attorney Paul Hartan
Attorney Wesley Horton
Attorney Susan Marks
Attorney Pamela Meotti
Attorney Jamie Porter
Attorney Charles Ray
Attorney Thomas Smith
Attorney Lauren Weisfeld

Also in attendance were:
Justice Peter T. Zarella
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Jessie Opinion

I. Old Business

A. Approval of Minutes of April 30, 2014 Meeting

The committee unanimously approved the minutes of the April 30, 2014 meeting.

B. Further Discussion—Preparation of Part One of the Appendix

Judge DiPentima mentioned that the Appellate Court has encountered a number of problems with part one of the appendix this fall. Some appellants prepare part one inadequately and fail to include critical materials. At times, the appellee addresses the inadequacy by including the missing materials in part one of its appendix, but appellees often do not include the missing documents. One appellee claimed that the Appellate Court should not review the appellant's claim because part one was inadequate.

Many appellants include too many materials in part one. Some parties are also starting to include far too many materials, such as lengthy portions of the transcript, in part two

of the appendix. Attorneys Horton and Ray agreed with Judge DiPentima's suggestion that additional education about preparing appendices is necessary. Attorney Horton proposed that the courts discuss these problems in an opinion. Attorney Calibey indicated that the Connecticut Bar Association's appellate section might be able to offer training.

The Supreme Court is encountering the same problems as the Appellate Court. Justice Zarella noted that although training by the appellate section would be helpful, it might not reach the target audience of attorneys who rarely handle appeals and self-represented parties. An article published in the Law Tribune or a similar publication could help to educate these attorneys. He also noted that the Office of the Appellate Clerk initially was not monitoring part one for compliance, but will do so going forward. Judge Huddleston suggested publishing information on the website. Attorney Meotti noted that the revised Handbook of Appellate Procedure, which is available online, includes detailed information about what to include in part one for different types of appeals. Attorney Hartan indicated that his office has contemplated posting checklists detailing the appropriate contents of part one.

According to Attorney D'Auria, it can be difficult for his office to determine how to best proceed when the appellant fails to prepare part one or prepares part one inadequately. His office has been reluctant to file motions, but has also been reluctant to assume responsibility for preparing part one in these cases. While Attorney Marks encounters these issues as well, she noted that compliance with the rules seems to be improving. Attorney Marks has, on occasion, called appellants when they have prepared part one inadequately. Some appellants are overinclusive when preparing part one because they believe that if they fail to include a document in the appendix, the document will not be before the court.

Attorney Babbin suggested that the clerk's office send a two-sided information sheet to appellants providing information about how to prepare part one and directing them to information on the website. This would reach attorneys who do not have significant appellate experience. Attorney Weisfeld suggested that a simple checklist would be helpful for many attorneys.

Justice Zarella summarized the educational options as follows: adding more detailed commentary to Practice Book § 67-2, publishing an article in the Law Tribune or similar publication; posting additional information on the website and pointing filers to that information and existing information; asking the clerk's office to send an information sheet to appellants. Judge Huddleston further suggested creating a form for each type of appeal.

Committee members agreed with Justice Palmer's suggestion that after both courts discuss the matter, committee members will receive an e-mail discussing future plans.

B1. Discussion—Redaction of Personal Identifying Information When Crucial to Legal Argument (listed on agenda as IIB)

Attorney Horton explained that the requirement to redact personal identifying information can cause difficulty in family cases because it is often necessary to discuss this information in the briefs and during oral argument.

Justice Zarella noted that the appellate courts redact more material than the trial court and mentioned that the courts are discussing ways to encourage consistency. Policy differences stem, in part, from the fact that Supreme Court arguments are broadcast more frequently, leading to greater potential for harm. The issue can be frustrating when the public already is aware of a victim's name but General Statutes § 54-86e still requires redaction. Because § 54-86e permits disclosure of the victim's name by order of the Superior Court, an appellant could apply for an order in such cases to avoid the need for redaction. As Attorney Marks noted, redacting a brief is very time consuming and a redacted brief is not as easy to read.

With respect to oral argument, Justice Palmer noted that sensitive information can be protected by denying a media coverage request rather than by closing the courtroom. Justice Zarella further noted that oral argument in such cases may proceed as usual as long as names are redacted to protect the identity of the parties.

Because both courts will be discussing the issue, Justice Palmer suggested e-mailing an update to committee members following the courts' discussions. Committee members agreed.

C. Further Discussion—Whether Rules Should be Amended to Bar Hybrid Representation

In response to Attorney Porter's indication that issues associated with hybrid representation in civil appeals are not creating significant problems for the Appellate Court at present, Judge DiPentima suggested tabling the issue for later discussion by the committee if necessary. Committee members agreed with Judge DiPentima's suggestion.

II. New Business

A. Discussion—Redaction of Personal Identifying Information When Crucial to Legal Argument (see IB1)

B. Discussion—Possible Inconsistency in Appellate Rules Governing Time Limit for Filing Motion to Dismiss an Appeal as Frivolous

Under Practice Book §§ 85-2 and 85-3, a party may file a motion for sanctions at any time. Because a party may file a motion to dismiss an appeal as frivolous under these sections, such a party arguably may circumvent the time limitations for filing a motion to dismiss as set by Practice Book § 66-8 simply by filing the motion pursuant to §§ 85-2 and 85-3. Attorney Porter questioned whether it is necessary to clarify which time period

for filing applies to a motion to dismiss an appeal as frivolous. Because the potential inconsistency does not appear to be a significant issue for the courts at present, committee members agreed with Judge DiPentima's suggestion that it is not necessary to amend the rules at this point.

III. Other Business

Under Practice Book § 67-2 (i), the appellant must certify that a copy of the brief/appendix has been sent to any trial judge who rendered a decision that is the subject matter of the appeal in accordance with Practice Book § 62-7, which specifies that service shall be by mail or hand delivery. Judge DiPentima raised Judge Sheldon's suggestion to amend the rules to permit electronic delivery of these documents to trial judges.

As Attorney Babbin noted, it may not be necessary to send these documents to the trial judge because they are available on the judicial branch website on the case detail page. Attorney Meotti explained that briefs in certain cases may not be available on the website and that appendices are not available. Justice Palmer and Judge DiPentima indicated that they will check with Judge Carroll to determine what action, if any, would be helpful to the trial court.

IV. Next Meeting

The date for the next meeting was left to the discretion of the committee chairpersons.