

ADVISORY COMMITTEE ON APPELLATE RULES  
December 19, 2013

The meeting was called to order by Chief Judge Alexandra DiPentima at 10 a.m. in the Attorney Conference Room of the Supreme Court. The following members attended:

Justice Richard Palmer, Co-Chair  
Chief Judge Alexandra DiPentima, Co-Chair

Judge Eliot Prescott  
Judge Sheila Huddleston  
Attorney Michele Angers  
Attorney Kathryn Calibey  
Attorney Gregory D'Auria  
Attorney John DeMeo  
Attorney Richard Emanuel  
Attorney Susan Marks  
Attorney Thomas Smith  
Attorney Giovanna Weller  
Attorney Martin Zeldis

Also in attendance were:

Justice Peter Zarella  
Attorney Ken Bartschi  
Attorney Jill Begemann  
Attorney Lori Petruzzelli  
Attorney Daniel Klau

Judge DiPentima congratulated Justice Palmer on his recent appointment as Co-Chair of the Advisory Committee on Appellate Rules. She also informed the committee that Attorney Jamie Porter, the Appellate Court supervising motions attorney, was recently appointed as a new committee member, but was unable to attend the meeting today.

## **I. OLD BUSINESS**

### **A. Minutes of May 22, 2013 Meeting.**

Attorney Emanuel moved that the committee approved the minutes, seconded by Judge Prescott. The committee unanimously approved the minutes of the May 22, 2013 meeting.

### **B. Proposed amendment of civil appellate fee waiver rule, § 63-6, to comport with General Statutes § 52-259b (c).**

Judge DiPentima explained that the proposed rule change was to make § 63-6 conform to General Statutes § 52-259b (c) by allowing the trial court to rule on an application for waiver of fees on the papers without a hearing in civil appeals.

Judge Prescott questioned whether there is a need for a time period requirement in situations where the motion for fee waiver is denied and the applicant requests a hearing, and suggested adding a twenty day period to the proposed rule.

Attorney DeMeo pointed out that if a time period is included, a question would arise as to whether it is jurisdictional, although it would not appear to be jurisdictional.

Attorney Weller noted that General Statutes § 52-259b (c) does not contain a time period and that the intent of the amendment to § 63-6 is to be consistent with the statute.

Attorneys Calibey and Zeldis noted that the rule states that the court must act promptly on the application. Attorney Calibey questioned whether the rule should state that if the application is denied, the applicant must promptly request a hearing.

Judge DiPentima indicated that she was not totally convinced that a time period was necessary. She noted that if nothing is done on a fee waiver, the appeal period would expire. Judge DiPentima said she would discuss the matter with Attorney Porter to see if she thought there is a need for a specific time period. The matter was then marked over to the next meeting.

## **II. NEW BUSINESS**

### **A. Proposed amendment to § 79a-2 (time to appeal in child protection matters)**

Judge DiPentima explained that the purpose of the rule change pertaining to the time to take an appeal and motions for extension is to make sure that appeals in child protection matters move along quickly, and to clarify that a trial judge may not grant an extension of more than twenty days beyond the initial appeal period. The rule is similar to § 66-1 pertaining to motions for extension of time.

Attorney Bartschi added that the purpose of the change was also to avoid penalizing a party who files an early motion for extension in child protection matters.

Attorney Weller moved that the committee adopt the proposal, seconded by Attorney Zeldis, and the motion passed unanimously.

### **B. Proposed amendment of § 61-9 (amended appeals)**

Attorney DeMeo explained that the purpose of the proposed rule change is to make

clear that an endorsed amended appeal form has to be filed in the appellate clerk's office.

Attorney Angers added that the intent of the change is to indicate that, with respect to an amended appeal, what is filed in the trial court must also be filed in the appellate clerks' office. This process is not currently being followed by all litigants.

Judge Huddleston moved that the committee adopt the proposal, seconded by Attorney Calibey, and the motion passed unanimously.

C. Discussion — Whether § 67-2 should be amended to require electronic submission of briefs and appendices filed by counsel in both Supreme and Appellate Court cases.

Judge DiPentima indicated that this was a discussion item only.

Justice Zarella explained that the proposed rule change in subsection (e) regarding the reduction of the number of paper briefs and appendices from 25 to 15 in the Supreme Court and from 15 to 10 in the Appellate Court was to reflect the actual use in the appellate system. He also explained that under proposed subsection (h), every counsel must file in the clerk's office an electronic version of the brief and appendix prior to filing the paper brief and appendix, and an electronic confirmation receipt.

Judge Prescott indicated that the trial judges do not really need paper copies of their cases that are on appeal, only an electronic version of the briefs and appendices.

Justice Zarella asked who would file the brief and appendix electronically to the trial judges, the attorney or the judicial staff.

Attorney Weller asked if the number of paper copies of briefs and appendices could be reduced even more. She also suggested that hyperlinks in briefs be allowed in electronic filing as it would be very helpful to all involved, including the court.

Justice Zarella explained that the number of copies was reduced to the number that is needed by the judges, clerks and appellate staff offices. He also stated that the issue of hyperlinks possibly could be added in the future, but indicated that it might be more expensive.

Attorney D'Auria asked for clarification that the appendices will be posted as part of the electronic file as well.

Attorney Klau, speaking on behalf of the Connecticut Bar Association, provided a technical explanation of the process by which the briefs and appendices are uploaded on the judicial branch website and the CBA website <http://blog.ctbriefsonline.com> in a PDF format, and explained that the trial judges could access the briefs and appendices from the judicial branch website.

Attorney Klau spoke on the technical aspect of the PDF format and suggested using OCR (optical character recognition) as is used in the federal system so that everything is searchable electronically. He also suggested that all briefs should be filed with covers so that the materials are easily identifiable.

Attorney DeMeo explained that the briefs are only available to the public when the case has been assigned for oral argument, and Attorney Klau explained the reason was to provide the parties an opportunity to strike confidential materials from the briefs before they are made public.

Judge Prescott expressed concern that many of the state agencies do not have the most up to date PDF formats.

Justice Zarella addressed some concerns by Attorney Zeldis by stating that electronic filing does not apply to self-represented parties and does not impact the due date of a brief.

Attorney Weller mentioned that the process will have an impact on the practitioner by putting added filing pressures on the attorney and could impact the due date because of travel time to get the paper copies to the clerk's office.

Justice Zarella suggested that there would be some leniency in emergency extension of time situations and while the new process is going into place.

Attorney Angers agreed with Justice Zarella and indicated that the appellate clerk's office would be reasonable in enforcing the new rule.

Attorney D'Auria questioned whether there could be one due date for electronic filing and a due date the following day for the paper copies.

Judge Huddleston indicated that the electronic filing process is already in effect and working well in the federal system. She stated that the proposed rule change is good and asked how close the appellate system is to electronic filing. She also noted that this process could take two days off of the time to file a brief, in practical terms.

Justice Zarella indicated that the date for appellate e-filing originally was December, 2014, but was later extended until April, 2015, and the implementation date is now up in the air.<sup>1</sup>

Attorney Bartschi stated that there have been some problems in the Superior Court system with electronic filing with respect to file size. He mentioned that often a file will have to be broken up in order to accommodate the filing process.

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<sup>1</sup>The date of 2015 was clarified after the meeting.

Justice Zarella said he would find out the size limitations on a single document for electronic filing and that the appellate system would most likely be similar to the Superior Court system.

Judge DiPentima stated that no action would be taking place today on the proposed rule, which would allow Justice Zarella time to address the Appellate Advocacy Section of the Connecticut Bar Association to get its feedback on the proposal.

Justice Palmer mentioned that the Supreme Court and the Appellate Court should take up this matter at their next meetings to get feedback from the appellate judges as well.

Judge DiPentima thanked Attorney Klau for his attendance and assistance, and asked that the minutes reflect the importance of his role in the electronic filing process and his offer of suggestions to the committee.

D. Discussion — Whether rules should be amended to bar hybrid representation in civil appeals, as in § 62-9A barring hybrid representation in criminal and habeas appeals.

Judge DiPentima stated that this was a discussion item only. She said that the memo proposing the rule change was submitted by Attorney Porter because of the growing problem in the Appellate Court with respect to the motions practice. A problem arises when a party and his attorney both file appearances and the party files motions that conflict with those filed by the attorney. She stated that it made no sense to have more than one person advocating for a party.

Judge Prescott questioned whether the proposal was similar to the pilot program in the Superior Court that allows for limited scope representation. He asked whether the trial court and the appellate courts should coordinate the two proposals and suggested that the committee touch base with Judge Lynda Munro as to the pilot program.

Attorneys Bartschi and D'Auria questioned whether the proposed rule change would result in more parties represented by counsel or more self-represented parties, and whether the court would be in a worse position than it is in now. Attorney Bartschi suggested that perhaps motions must be filed through counsel to avoid conflict when counsel and the party both file appearances.

Attorney Angers stated that the rule is needed because usually there is a lack of coordination between counsel and the self-represented party with respect to the filing of motions, and often they can be in conflict regarding their respective positions.

Attorney Marks noted the potential for ethical issues regarding contacting a person who is represented by counsel.

Justice Palmer agreed and stated that both the client and his attorney cannot be in control of the motion practice at the same time.

Judge DiPentima stated that she will talk to Attorney Porter to see how pervasive the problem currently is at the Appellate Court, and she continued the discussion to the next meeting.

E. Discussion — Whether rules should codify or regulate attorneys’ participation “on the brief.”

Judge DiPentima stated that this was a discussion item only. She indicated that this has caused a problem with the scheduling of cases at the Appellate Court due to the necessity to recuse certain judges who have been scheduled to hear a case and then discover the need for recusal due to additional counsel listed on the brief.

Attorney Angers raised the concern of where to enter in the database the names of the additional counsel listed on the brief so that the judges will have advance notice of these counsel prior to scheduling.

Attorney Bartschi asked whether an amended docketing statement could indicate all counsel on the brief such that the judges will have notice.

Judge DiPentima stated that she will discuss with the appellate clerk’s office whether the docketing statement could be used as a solution to this problem.

### **III. Other Business Before the Committee.**

A. Attorney Emanuel raised the issue of scanning documents in the appellate file as some trial courts, such as the Hartford clerk’s office, have allowed. He indicated that the copies were reproduced very well and in color.

B. Attorney Smith informed the committee that this was the last meeting that Attorney Lori Petruzzelli would be attending because she was leaving to take a new position with Legal Services. He thanked Lori on behalf of the committee for all her hard work and dedication over the years, her expertise in making sure that the rules were published correctly, and her diligence in making sure that the official Connecticut Practice Book is published annually in a timely manner.

Judge DiPentima also thanked Lori on behalf of the committee for everything that she has done for the committee and wished her well in her new position with Legal Services.

### **IV. Next Meeting**

The meeting adjourned at 11:25 a.m. The date for the next meeting was left to the discretion of the committee chairpersons.