

**RULES OF APPELLATE PROCEDURE**

**NOTICE**

Notice is hereby given that the following amendments to the Rules of Appellate Procedure were adopted to take effect January 1, 2017, except that the amendments to Sections 69-1 and 69-3 were adopted to take effect November 30, 2016. The amendments were approved by the Appellate Court on October 12, 2016, and by the Supreme Court on October 18, 2016. With respect to Sections 69-1 and 69-3, the courts have waived the provision of Section 86-1 requiring publication of rules sixty days prior to their effective date.

Attest:

Paul Hartan

*Chief Clerk Appellate*

**INTRODUCTION**

Contained herein are amendments to the Rules of Appellate Procedure. These amendments are indicated by brackets for deletions and underlined text for added language.

This material should be used as a supplement to the Connecticut Practice Book until the 2017 revision of the Practice Book becomes available.

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**RULES OF APPELLATE PROCEDURE**

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**AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE**

**CHAPTER 60  
GENERAL PROVISIONS RELATING TO APPELLATE RULES AND  
APPELLATE REVIEW**

**Sec. 60-4. Definitions**

“Appellant” shall mean the party, or parties if an appeal is jointly filed, taking the appeal.

“Appellee” shall mean all other parties in the trial court at the time of judgment, unless after judgment the matter was withdrawn as to them or unless a motion for permission not to participate in the appeal has been granted by the court.

“Counsel of record” shall [also] include all attorneys and self-represented parties appearing in the trial court at the time of the initial appellate filing, unless an exception pursuant to Section 62-8 applies, all attorneys and self-represented parties who filed the appellate matter, and all attorneys and self-represented parties who file an appearance in the appellate matter.

“Court reporter” shall refer to all court reporters and court reporting monitors.

“Administrative appeal” shall mean an appeal from a judgment of the superior court concerning the appeal to that court from a decision of any officer, board, commission or agency of the state or of any political subdivision of the state.

“Filed” shall mean the receipt by the appellate clerk of a paper or document by electronic submission pursuant to Section 60-7. If an exemption to electronic filing has been granted or if the electronic filing requirements do not apply, filed shall mean receipt of the paper or document by hand delivery, by first class mail or by express mail delivered by the United States Postal Service or an equivalent commercial service. If a document must be filed by a certain date under these rules or under any statutory provision, the document must be received by the appellate clerk by the close of business on that date; it is not sufficient that a document be mailed by that date to the appellate clerk unless a rule or statutory provision expressly so computes the time.

“Motion” shall include applications and petitions, other than petitions for certification. A preappeal motion is one that is filed prior to or independent of an appeal.

“Issues” shall include claims of error, certified questions and questions reserved.

“Paper” and “Document” shall include an electronic submission that complies with the procedures and standards established by the chief clerk of the appellate system under the direction of the administrative judge of the appellate system and a paper or document created in or converted to a digital format by the judicial branch.

“Petition” does not include petitions for certification unless the context clearly requires.

“Record” shall include the case file, any decisions, documents, transcripts, recordings and exhibits from the proceedings below, and, in appeals from administrative agencies, the record returned to the trial court by the administrative agency.

“Requests” shall include correspondence and notices as permitted by these rules.

“Signature” shall be made upon entry of an attorney’s individual juris number or a self-represented party’s user identification number during the filing transaction, unless an exemption from the requirements of Section 60-7 (c) has been granted or applies.

“Submission” shall mean a “paper” or a “document” and shall include an electronic submission that complies with the procedures and standards established by the chief clerk of the appellate system under the direction of the administrative judge of the appellate system.

(For additional definitions, see Secs. 62-2 and 76-6.)

## CHAPTER 62 CHIEF JUDGE, APPELLATE CLERK AND DOCKET: GENERAL ADMINISTRATIVE MATTERS

### **Sec. 62-6. Signature on Papers**

All papers including original copies of briefs shall be signed by counsel of record. Each pleading or other document filed shall set forth the signer’s telephone and facsimile numbers, mailing address, e-mail address, and, if applicable, the signer’s juris number or self-represented party user identification number. Attorneys shall sign electronically filed documents by entering their individual juris number during the filing transaction. Self-represented parties shall sign electronically filed documents by entering their self-represented party user identification number during the filing transaction. See Section 60-4.

### **Sec. 62-8. Names of Counsel; Appearance**

Counsel of record for all parties appearing in the trial court at the time of the appellate filing shall be deemed to have appeared in the appeal unless permission to withdraw has been granted pursuant to Section 62-9 or unless an in [lieu] place of appearance pursuant to Section 3-8 has been filed by other counsel or unless the other provisions of Section 3-9 apply. Counsel of record who filed the appeal or filed an appearance in the appellate court after the appeal was filed shall be deemed to have appeared in the trial court for the limited purpose of prosecuting or defending the appeal. Unless otherwise provided by statute or rule, counsel who have so appeared shall be entitled to review all trial court docket sheets and files, including sealed files, and shall be entitled to participate in proceedings in the trial court on motions filed in the trial court pursuant to Section 66-1 and motions filed in the appellate court but referred to the trial court for decision.

An appearance filed after the case is ready pursuant to Section 69-2 requires permission of the court.

This rule shall not be deemed to permit appellate counsel to review records that were sealed as to trial counsel but retained in the trial court file for appellate review.

This rule shall not be deemed to excuse trial counsel with respect to preserving a defendant's right to appeal pursuant to Section 63-7; nor shall this rule prevent trial counsel from moving for a withdrawal of appearance pursuant to Section 62-9.

### **Sec. 62-9. Withdrawal of Appearance**

(a) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within ten days after written notice has been given or mailed to such attorney or party that a new appearance has been filed in [lieu] place of the appearance of such attorney or party in accordance with Section 62-8.

(b) An attorney may, by motion, withdraw his or her appearance for a party after an additional appearance representing the same party has been entered on the docket. A motion to withdraw pursuant to this subsection shall state that an additional appearance has been entered on appeal. The appellate clerk may as of course grant the motion if the additional appearance has been entered.

(c) Except as provided in subsections (a) and (b), no attorney whose appearance has been entered on the docket shall withdraw his or her appearance without leave of the court. A motion for leave to withdraw shall be filed with the appellate clerk in accordance with Sections 66-2 and 66-3. The motion shall include the current address of the party as to whom the attorney seeks to withdraw. No motion for leave to withdraw shall be granted until the court is satisfied that reasonable notice has been given to the party being represented and to other counsel of record. Reasonable notice to the party or parties may be satisfied by filing along with the motion, a certified or registered mail return receipt signed by the individual party or parties represented by the attorney.

(d) (1) A motion for leave to withdraw appearance of appointed appellate counsel filed pursuant to Sections 23-41 (a) or 43-34, and supporting documentation, shall be filed under seal with the appellate clerk. Except as otherwise provided herein, [T]he form of the motion shall comply with Sections 66-2 and 66-3. The brief or memorandum of law accompanying the motion[, as required under Section 43-35.] shall comply with Sections 23-41 (b) or 43-35 in form and substance. The transcript of the relevant proceedings shall be filed concurrently with the motion to withdraw. [The original of the brief and the transcript of the pertinent proceedings shall be filed with the appellate clerk with the motion to withdraw.]

(2) The motion and supporting brief or memorandum of law shall be delivered to the petitioner or defendant. Counsel shall deliver a notice that a motion for leave to withdraw as appointed counsel has been filed, but shall not deliver a copy of the motion and supporting brief or memorandum of law to opposing counsel of record. The motion shall contain a certification that such notice has been delivered to opposing counsel of record and that a copy of the motion and supporting brief or memorandum of law has been delivered to the petitioner or defendant.

(3) The motion, brief or memorandum of law, and transcript shall be referred to the trial court for decision. If the trial court grants the motion to withdraw, counsel shall immediately notify his or her former client, by letter, of the status of the appeal and the responsibilities necessary to prosecute the appeal. Counsel shall file a copy of the letter with the appellate clerk. The trial court's decision shall be sealed and [That decision] may be reviewed pursuant to Section 66-6. Subsequent motions regarding the trial court's decision on the motion to withdraw appointed counsel shall also be filed under seal.

(4) The appellate clerk shall maintain all filings and related decisions pursuant to this subsection under seal. The panel hearing the merits of the appeal shall not view any briefs and materials filed under seal pursuant to this subsection.

## CHAPTER 63 FILING THE APPEAL; WITHDRAWALS

### **Sec. 63-2. Expiration of Time Limitations; Counting Days; Hours of Operation**

In determining the last day for filing any [papers] documents, the last day shall, and the first day shall not, be counted. Time shall be counted by calendar, not working, days. When the last day of any limitation of time for filing any document under these rules or an order of the court falls on a day when the office of the clerk of the trial court or of the appellate clerk is closed, the document may be filed on the next day when such office is open.

The appellate clerk's office shall be open from [9] 8:30 a.m. until 5 p.m. on weekdays, with the exception of legal holidays and closures for exigent circumstances. The window at the appellate clerk's office shall be open from 8:30 a.m. until 4:30 p.m. From 4:30 p.m. until 5 p.m., paper briefs, transcripts filed pursuant to Section 63-8 (e) (1), and paper documents filed by counsel of record who have received an exemption from the electronic filing requirements pursuant to Section 60-8, shall be placed in the lobby of the clerk's office. All submissions placed in the lobby shall be considered filed as of that date. Upon review, the appellate clerk may return any noncompliant submission pursuant to Section 62-7 (a).

[When the last day of any limitation of time for filing any paper under these rules or an order of the court falls on a day when the office of the clerk of the trial court or of the appellate clerk is closed, the paper may be filed on the next day when such office is open.]

A document that is electronically received by the appellate clerk's office for filing after 5 p.m. on a day in which that office was open or is electronically received by that office for filing at any time on a day in which that office is closed, shall be deemed filed on the next business day that office is open. If a party is unable to electronically file a document because the court's electronic filing system is nonoperational for thirty consecutive minutes from 9 a.m. to 3 p.m. or for any period of time from 3 p.m. to 5 p.m. on the day on which the electronic filing is attempted, and such day is the last day for filing the document, the document shall be deemed to be timely filed if received by the appellate clerk's office on the next business day the electronic filing system is operational.

### **Sec. 63-8. Ordering and Filing of Paper Transcripts**

(a) On or before the date of the filing of the Section 63-4 papers, the appellant shall, subject to Section 63-6 or 63-7 if applicable, order, using form JD-ES-38, from the official reporter a transcript of the parts of the proceedings not already on file which the appellant deems necessary for the proper presentation of the appeal. Such order shall specify the case name, docket number, judge's name(s), and hearing date(s), and include a brief, detailed statement describing the parts of the proceedings of which a transcript has been ordered. If any other party deems other parts of the transcript necessary, that party shall, within twenty days from the filing of the appellant's transcript papers, similarly order those parts in writing from the official reporter.

(b) A party shall promptly make satisfactory arrangements for payment of the costs of the transcript, pursuant to guidelines established by the chief court administrator. After those arrangements have been made, the official reporter shall [send the party who ordered the transcript] deliver to the ordering party a written acknowledgment of the order, with an estimated date of delivery and the number of pages in the transcript. The ordering party shall file it with the appellate clerk with certification pursuant to Section 62-7. The official reporter shall also immediately

deliver [copies] a copy of the acknowledgment to [the chief court administrator and the appellate clerk] court transcript services. If the final portion of the transcript cannot be delivered on or before the estimated delivery date on the acknowledgment, the official reporter will, not later than the next business day, issue to the ordering party an amended transcript order acknowledgment form (JD-ES-38A) with a revised estimated delivery date and shall also immediately deliver [copies] a copy of the amended acknowledgment form to [the chief court administrator and the appellate clerk] court transcript services. The ordering party shall file the amended acknowledgment form [forthwith] immediately with the appellate clerk with certification pursuant to Section 62-7.

(c) The official reporter shall cause each court reporter involved in the production of the transcript to prepare a certificate of delivery stating the number of pages in the transcript and the date of its delivery to the party who ordered it. If delivery is by mail, the transcript shall be mailed first class certified, return receipt requested. The date of mailing is the date of delivery. If delivery is by hand, the court reporter shall obtain a receipt acknowledging delivery. The date of the receipt is the date of delivery. Each court reporter shall forward the certificates of delivery to the official reporter with a copy to [the chief court administrator] court transcript services. Upon receipt of all the certificates of delivery, the official reporter shall [forward to the appellate clerk, with copies to the chief court administrator and the party who ordered the transcript,] deliver to the ordering party a certificate of completion stating the total number of pages in the entire transcript and the date of final delivery of the transcript. The official court reporter shall also immediately deliver a copy of the certificate of completion to court transcript services.

(d) Upon receipt of the certificate of completion from the official reporter, [counsel who ordered the transcript] the ordering party shall file with the appellate clerk the certificate of completion along with a certification that a [paper] copy of the certificate of completion has been [sent] delivered to all counsel of record in accordance with Section 62-7.

(e) (1) The appellant is required, either before or simultaneously with the filing of the appellant's brief, to file with the appellate clerk one unmarked, nonreturnable copy of the transcript, including a copy of the court reporter's certification page, ordered pursuant to subsection (a).

(2) All other parties are likewise required, either before or simultaneously with the filing of their briefs, to file those additional portions ordered pursuant to subsection (a) but shall not include the portions already filed by the appellant.

(3) The party filing the transcript shall provide the appellate clerk and all opposing counsel with a list of the number, and inclusive dates, of the volumes being filed. Form JD-CL-62, or one similar to it, should be used to satisfy this subsection.

### **Sec. 63-8A. Electronic Copies of Transcripts**

In addition to the requirements of Section 63-8:

(a) Any party ordering a transcript of evidence as part of an appeal, a writ of error, or a motion for review shall, at the same time, order from the court reporter an electronic version of the transcript. If the party received the paper transcript prior to the filing of the appeal, the party shall order an electronic version of the transcript within the period specified by these rules for the ordering of a transcript.

(b) Whenever an electronic transcript is ordered in accordance with this section, the court reporter shall produce an electronic version of the transcript[, ] and deliver it to the ordering party[, ] and the official court reporter. Upon receipt of all electronic versions of the transcript ordered, the official court reporter shall deliver them to [file it with] the appellate clerk, [together] with a certification that the electronic

version of the transcript is accurate and a copy of the certificate of [delivery] completion.

## **CHAPTER 69 ASSIGNMENT OF CASES FOR ARGUMENT**

### **Sec. 69-1. Docket**

The appellate clerk shall periodically prepare a docket of all pending cases which are not on a current assignment list and which appear to be ready for assignment under Section 69-2 or have been ordered to be heard by the court. The appellate clerk [and] shall post the docket on the judicial branch website, [and deliver the docket to each appellate jurist, each counsel of record appearing in the cases entered on the docket, and the reporter of judicial decisions.] The electronic posting on the judicial branch website shall be official notice of the docket. Counsel of record who have received an exemption from the electronic filing requirements pursuant to Section 60-8 shall receive paper notice of the inclusion of the case on the docket.

COMMENTARY: As of November 30, 2016, the docket will no longer be mailed to counsel of record. Paper notice of a case's inclusion on the docket will be sent to parties who are exempt from the requirements of electronic filing.

### **Sec. 69-2. Cases Ready for Assignment**

Cases will be considered ready for assignment when the briefs and appendices of all parties, including reply briefs, have been filed or the time for filing reply briefs has expired. Any case ready for assignment may be assigned pursuant to Section 69-3. After notice to counsel of record of a date and time to be heard, the chief justice, the chief judge, or a designee may order the assignment of any appeal, notwithstanding the fact that the case on appeal does not appear on the docket.

[Cases may be assigned for argument on a standby basis in which event counsel will be notified at least forty-eight hours before the time scheduled for oral argument that the standby case is to be heard.]

If an assigned case[, whether on standby basis or not,] is settled or withdrawn for any reason, counsel for the appellant shall notify the appellate clerk immediately.

### **Sec. 69-3. Time for Assignments; Order of Assignment**

Assignments of cases ordinarily will be made in the order in which the cases become ready for assignment pursuant to Section 69-2. Requests for variations from this order, stating the reason therefor, shall be made by filing an assignment form (JD-AC-14 or JD-SC-37) in the time frame specified on the docket with certification pursuant to Section 62-7.

An attorney making such a request shall also indicate that a copy of the request has been delivered to each of his or her clients who are parties to the appeal.

Assignments for oral argument in the supreme court and appellate court shall take precedence over all other judicial branch assignments.

The appellate clerk will [mail copies of the assignment to all counsel of record and] post the assignment of cases on the judicial branch website. The electronic posting on the judicial branch website shall be official notice of the assignment. Counsel of record who have received an exemption from the electronic filing requirements pursuant to Section 60-8 shall receive paper notice of the assignment of the case.

COMMENTARY: As of November 30, 2016, the assignment of cases will no longer be mailed to counsel of record. Paper notice of a case's assignment will be sent to parties who are exempt from the requirements of electronic filing.

## CHAPTER 70 ARGUMENTS AND MEDIA COVERAGE OF COURT PROCEEDINGS

### **Sec. 70-3. Order of Argument**

Counsel of record for the appellant or plaintiff in error will be entitled to open and close the argument. On a reservation, the plaintiff will open and close, unless the court otherwise directs, except in suits for the construction of wills or of interpleader, when the court will fix the order of argument. If there are cross appeals, the original appellant will open and close unless the court otherwise orders for cause shown. If there are consolidated appeals, the parties in the appeal filed first in the trial court will argue first unless the court otherwise orders.

### **Sec. 70-4. Time Allowed for Oral Argument; Who May Argue**

Unless the court grants a request for additional time made before oral argument begins, argument of any case shall not exceed one-half hour on each side. The time allowed may be apportioned among counsel on the same side of a case as they may choose. The court may terminate the argument whenever in its judgment further argument is unnecessary. Prior to the date assigned for hearing, counsel of record may file a request with the appellate clerk to allow more than one counsel to present oral argument for one party to the appeal. No argument shall be allowed any party who has not filed a brief or who has not joined in the brief of another party.

### **Sec. 70-5. Points to Be Argued**

(a) Oral argument should clarify and focus arguments in the written briefs. The court discourages oral argument read from a prepared text and lengthy quotations from legal precedents, the transcript, or the record.

(b) Counsel of record should assume that the court has read the briefs in advance of oral argument. No points made in briefs will be considered waived because not argued orally. Rebuttal argument shall be confined to the points presented by the argument of opposing counsel of record.

## CHAPTER 84 APPEALS TO SUPREME COURT BY CERTIFICATION FOR REVIEW

### **Sec. 84-11. Papers to Be Filed by Appellant and Appellee**

(a) Upon the granting of certification, the appellee may present for review alternative grounds upon which the judgment may be affirmed provided those grounds were raised and briefed in the appellate court. Any party to the appeal may also present for review adverse rulings or decisions which should be considered on the appeal in the event of a new trial, provided that such party has raised such claims in the appellate court. If such alternative grounds for affirmation or adverse rulings or decisions to be considered in the event of a new trial were not raised in the appellate court, the party seeking to raise them in the supreme court must move for special permission to do so prior to the filing of that party's brief. Such permission will be granted only in exceptional cases where the interests of justice so require.

(b) Any party may also present for review any claim that the relief afforded by the appellate court in its judgment should be modified, provided such claim was raised in the appellate court either in such party's brief or upon a motion for reconsideration.

(c) Any party desiring to present alternative grounds for affirmance, adverse rulings or decisions in the event of a new trial or a claim concerning the relief ordered by the appellate court shall file a statement thereof within fourteen days from the [issuance of notice that certification to appeal has been granted] date the

certified appeal is filed in accordance with Section 84-9. Except for a docketing statement, parties shall not file other Section 63-4 papers on a certified appeal without permission of the supreme court.

COMMENTARY: This rule change accommodates electronic filing. Section 84-9 gives the petitioning party twenty days from notice issuing on the granting of certification to file the certified appeal, but only fourteen days for alternative grounds to be presented. Since no documents can be electronically filed in the certified appeal prior to its filing, this rule change is necessary to facilitate the timely filing of alternative grounds for affirmance.

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