

RULES OF APPELLATE PROCEDURE

NOTICE

Notice is hereby given that the following amendments to the Rules of Appellate Procedure were adopted to take effect June 15, 2017. The amendments were approved by the Appellate Court on February 22, 2017, and by the Supreme Court on March 15, 2017.

Attest:

Carolyn Ziogas
Acting 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 2018 revision of the Practice Book becomes available.

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RULES OF APPELLATE PROCEDURE

AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

CHAPTER 61 REMEDY BY APPEAL

Sec. 61-11. Stay of Execution in Noncriminal Cases

(a) Automatic stay of execution

Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the Connecticut supreme court), and Section 71-7 (petitions for certiorari by the United States supreme court).

(b) Matters in which no automatic stay is available under this rule

Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to chapter 2 of these rules, in juvenile matters brought pursuant to chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection.

Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the filing of an appeal or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal is filed, any further stay shall be sought pursuant to Section 61-12.

For purposes of this rule, “administrative appeal” means an appeal filed from a final judgment of the trial court or the compensation review board rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals filed pursuant to the Uniform Administrative Procedure Act, “administrative appeal” includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals.

(c) Stays in Family Matters and Appeals from Decisions of the Superior Court in Family Support Magistrate Matters

Unless otherwise ordered, no automatic stay shall apply to orders of relief from physical abuse pursuant to General Statutes § 46b-15, to orders for exclusive possession of a residence pursuant to General Statutes §§ 46b-81 or 46b-83 or to orders of periodic alimony, support, custody or visitation in family matters brought pursuant to chapter 25, or to any decision of the superior court in an appeal of a final determination of a support order by a family support magistrate brought pursuant to chapter 25a, or to any later modification of such orders. The automatic orders set forth in Section 25-5 (b) (1), (2), (3), (5) and (7) shall remain in effect during any appeal period and, if an appeal is filed, until the final determination of the cause unless terminated, modified or amended further by order of a judicial authority upon motion of either party.

Any party may file a motion to terminate or impose a stay in matters covered by this subsection, either before or after judgment is rendered, based upon the existence or expectation of an appeal. Such a motion shall be filed in accordance with the procedures in subsection (e) of this rule or Section 61-12. The judge hearing such motion may terminate or impose a stay of any order, pending appeal, as appropriate, after considering (1) the needs and interests of the parties, their children and any other persons affected by such order; (2) the potential prejudice that may be caused to the parties, their children and any other persons affected, if a stay is entered, not entered or is terminated; (3) if the appeal is from a judgment of dissolution, the need to preserve, pending appeal, the mosaic of orders established in the judgment; (4) the need to preserve the rights of the party taking the appeal to obtain effective relief if the appeal is successful; (5) the effect, if any, of the automatic orders under Section 25-5 on any of the foregoing considerations; and (6) any other factors affecting the equities of the parties.

The judge who entered the order in a family matter from which an appeal lies may terminate any stay in that matter upon motion of a party as provided in this subsection or sua sponte, after considering the factors set forth in this subsection or if the judge is of the opinion that an extension of time to appeal is sought or the appeal is filed only for delay. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

(d) Termination of stay

In all cases not governed by subsection (c), termination of a stay may be sought in accordance with subsection (e) of this rule. If the judge who tried the case is of the opinion that (1) an extension to appeal is sought, or the appeal is filed, only for delay or (2) the due administration of justice so requires, the judge may at any time, upon motion or sua sponte, order that the stay be terminated. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

(e) Motions to terminate stay

A motion to terminate a stay of execution filed before judgment is entered shall be filed with the trial court, and the judge who tried or presided over the matter may rule upon the motion when judgment is entered. If such a motion is filed after judgment but before an appeal is filed, the motion shall be filed with the clerk of the trial court and may be ruled upon by the trial judge thereafter. After an appeal is filed, such a motion shall be filed with the appellate clerk and shall be forwarded by the appellate clerk to the trial judge for a decision. If the judge who tried or presided over the case is unavailable, the motion shall be forwarded to the clerk of the trial court in which the case was tried, who shall assign the motion for a hearing and decision to any judge of the superior court.

Upon hearing and consideration of the motion, the trial court shall file with the clerk of the trial court its written or oral memorandum of decision that shall include the factual and legal basis therefor. If oral, the decision shall be transcribed by the court reporter and signed by the trial court. If an appeal has not been filed, the clerk shall enter the decision on the trial court docket and shall send notice of the decision to counsel of record. If an appeal has been filed, the clerk of the trial court shall enter the decision on the trial court docket and send notice of the decision to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

(f) Motions to request stay

Requests for a stay pending appeal where there is no automatic stay shall be governed by Section 61-12.

(For stays of execution in criminal cases, see Section 61-13; for stays in death penalty cases, see Section 61-15.)

(g) Strict Foreclosure—Motion Rendering Ineffective a Judgment of Strict Foreclosure

In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. Such affidavit shall recite the specific facts relied on in support of the moving party's claim of good cause. If, notwithstanding the submission of such an affidavit of good cause, the plaintiff contends that there is no good cause to stay the court's judgment of strict foreclosure pending resolution of the appeal, the plaintiff may seek termination of the automatic stay by filing a motion requesting such relief accompanied by an affidavit stating the basis for the plaintiff's claim. In the event such a motion to terminate stay is filed, it shall be set down for argument and the taking of evidence, if necessary, on the second short calendar next following the filing of the motion. There shall be no automatic appellate stay in the event that the court grants the motion to terminate the stay and, if necessary, sets new law dates. There shall be no automatic stay pending a motion for review of an order terminating a stay under this subsection.

(h) Foreclosure by Sale—Motion Rendering Ineffective a Judgment of Foreclosure by Sale

In any action for foreclosure in which the owner of the equity has filed a motion to open or other similar motion, which motion was denied fewer than twenty days prior to the scheduled auction date, the auction shall proceed as scheduled notwithstanding the court's denial of the motion, but no motion for approval of the sale shall be filed until the expiration of the appeal period following the denial of the motion without an appeal having been filed. The trial court shall not vacate the automatic stay following its denial of the motion during such appeal period.

COMMENTARY: The changes to this section clarify that there is no automatic stay of orders of support from superior court decisions in appeals from support orders in family support magistrate matters brought pursuant to chapter 25a.

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

Sec. 62-6. Signature on [Papers] Documents

All [papers] documents [including original copies of briefs] shall be signed by counsel of record. Attorneys shall sign electronically filed documents and electronically submitted briefs by entering their individual juris number during the filing transaction. Self-represented parties shall sign electronically filed documents and electronically submitted briefs by entering their self-represented party user identification number during the filing transaction. See Section 60-4.

Paper briefs and appendices and documents filed by counsel of record who are exempt from electronic filing requirements shall be signed and shall set forth the signer's telephone number, mailing address, and e-mail address below the signature.

[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.]

CHAPTER 63
FILING THE APPEAL; WITHDRAWALS

Sec. 63-4. Additional Papers to Be Filed by Appellant and Appellee when Filing Appeal

(a) Within ten days of filing an appeal, the appellant shall also file with the appellate clerk the following:

(1) A preliminary statement of the issues intended for presentation on appeal. If any appellee wishes to: (A) present for review alternative grounds upon which the judgment may be affirmed; (B) present for review adverse rulings or decisions of the court which should be considered on appeal in the event the appellant is awarded a new trial; or (C) claim that a new trial rather than a directed judgment should be ordered if the appellant is successful on the appeal, that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues.

Whenever the failure to identify an issue in a preliminary statement of issues prejudices an opposing party, the court may refuse to consider such issue.

(2) A certificate stating that no transcript is deemed necessary, or a copy of the transcript order acknowledgment form (JD-ES-38) with section I thereof completed, filed with the official reporter pursuant to Section 63-8. If any other party deems any other parts of the transcript necessary, that party shall, within twenty days from the filing of the appellant's transcript papers, file a copy of the order form (JD-ES-38), which that party has placed in compliance with Section 63-8.

If the appellant is to rely on transcript delivered prior to the taking of the appeal, an order form (JD-ES-38) shall be filed stating that an electronic version of a previously delivered transcript has been ordered. The detailed statement of the transcript to be relied on required by Section 63-8 also must be filed. If any other party deems any other parts of the transcript necessary, and those parts have not been delivered at the time of the taking of the appeal, that party shall have twenty days to order those additional parts. If any other party is to rely on transcript delivered prior to the taking of the appeal, an order form (JD-ES-38) shall be filed within twenty days, stating that an electronic version of a previously delivered transcript has been ordered.

(3) A docketing statement containing the following information to the extent known or reasonably ascertainable by the appellant: (A) the names and addresses of all parties to the appeal, the names, addresses, and e-mail addresses of trial and appellate counsel of record, and the names and addresses of all persons having a legal interest in the cause on appeal sufficient to raise a substantial question whether a judge should be disqualified from participating in the decision on the case by virtue of that judge's personal or financial interest in any such persons; (B) the case names and docket numbers of all pending appeals to the supreme court or appellate court which arise from substantially the same controversy as the cause on appeal, or involve issues closely related to those presented by the appeal; (C) whether there were exhibits in the trial court; and (D) in criminal cases, the defendant's conviction(s) and sentence(s) that are the subject of the appeal, and whether the defendant is incarcerated as a result of the proceedings in which the appeal is being filed. If additional information is or becomes known to, or is reasonably ascertainable by the appellee, the appellee shall file a docketing statement supplementing the information required to be provided by the appellant.

(4) In all noncriminal matters, except for matters exempt from a preargument conference pursuant to Section 63-10, a preargument conference statement.

(5) A constitutionality notice, in all noncriminal cases where the constitutionality of a statute has been challenged. Said notice shall identify the statute, the name and

address of the party challenging it, and whether the statute's constitutionality was upheld by the trial court. The appellate clerk shall deliver a copy of such notice to the attorney general. This section does not apply to habeas corpus matters based on criminal convictions, or to any case in which the attorney general is a party, has appeared on behalf of a party, or has filed an amicus brief in proceedings prior to the appeal.

(6) In matters in which documents are under seal, conditionally or otherwise, or limited as to disclosure, a copy of the time, date, scope and duration of sealing order form (JD-CL-76). (See Section 77-2.)

(b) Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues at any time until that party's brief is filed. Amendments to the docketing statement may be filed at any time. Amendments to the transcript statement may be made only with leave of the court. If leave to file such an amendment is granted, the adverse party shall have the right to move for permission to file a supplemental brief and for an extension of time. Amendments to the preargument conference statement shall not be presented in writing but may be presented orally at the preargument conference, if one is held.

(c) Failure to comply with this rule shall be deemed as sufficient reason to schedule a case for sanctions under Section 85-3 or for dismissal under Section 85-1.

CHAPTER 66 MOTIONS AND OTHER PROCEDURES

Sec. 66-5. Motion for Rectification; Motion for Articulation

A motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the decision of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable. Any motion filed pursuant to this section shall state with particularity the relief sought and shall be filed with the appellate clerk. Any other party may oppose the motion by filing an opposition with the appellate clerk within ten days of the filing of the motion for rectification or articulation. The trial court may, in its discretion, require assistance from the parties in providing an articulation. Such assistance may include, but is not limited to, provision of copies of transcripts and exhibits.

The appellate clerk shall forward the motion for rectification or articulation and the opposition, if any, to the trial judge who decided, or presided over, the subject matter of the motion for rectification or articulation for a decision on the motion. If any party requests it and it is deemed necessary by the trial court, the trial court shall hold a hearing at which arguments may be heard, evidence taken or a stipulation of counsel received and approved. The trial court may make such corrections or additions as are necessary for the proper presentation of the issues. The clerk of the trial court shall list the decision on the trial court docket and shall send notice of the court's decision on the motion to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

Nothing herein is intended to affect the existing practice with respect to opening and correcting judgments and the records on which they are based. The trial court shall file any such order changing the judgment or the record with the appellate clerk.

Corrections or articulations made before the appellant's brief and appendix are prepared shall be included in the appellant's appendix. Corrections or articulations made after the appellant's brief and appendix have been filed, but before the appellee's brief and appendix have been filed, shall be included in the appellee's appendix. When corrections or articulations are made after both parties' briefs and appendices have been filed, the appellant shall file the corrections or articulations as an addendum

to its appendix. Any addendum shall be filed within ten days after issuance of notice of the trial court's order correcting the record or articulating the decision.

The sole remedy of any party desiring the court having appellate jurisdiction to review the trial court's decision on the motion filed pursuant to this section or any other correction or addition ordered by the trial court during the pendency of the appeal shall be by motion for review under Section 66-7.

Upon the filing of a timely motion pursuant to Section 66-1, the appellate clerk may extend the time for filing briefs until after the trial court has ruled on a motion made pursuant to this section or until a motion for review under Section 66-7 is decided.

Any motion for rectification or articulation shall be filed within thirty-five days after the delivery of the last portion of the transcripts or, if none, after the filing of the appeal, or, if no memorandum of decision was filed before the filing of the appeal, after the filing of the memorandum of decision. If the court, sua sponte, sets a different deadline from that provided in Section 67-3 for filing the appellant's brief, a motion for rectification or articulation shall be filed ten days prior to the deadline for filing the appellant's brief, unless otherwise ordered by the court. The filing deadline may be extended for good cause. No motion for rectification or articulation shall be filed after the filing of the appellant's brief except for good cause shown.

A motion for further articulation may be filed by any party within twenty days after issuance of notice of the filing of an articulation by the trial judge. A motion for extension of time to file a motion for articulation shall be filed in accordance with Section 66-1.

CHAPTER 67 BRIEFS

Sec. 67-8. The Appendix; Contents and Organization

(a) An appendix shall be prepared in accordance with Section 67-2.

(b) The appellant's appendix shall be divided into two parts.

(1) Part one of the appellant's appendix shall contain: a table of contents giving the title or nature of each item included; the docket sheets, a case detail, or court action entries in the proceedings below; in chronological order, all relevant pleadings, motions, requests, findings, and opinions or decisions of the trial court or other decision-making body (see Sections 64-1 and 64-2); the signed judgment file, if applicable, prepared in the form prescribed by Section 6-2 et seq.; the appeal form, in accordance with Section 63-3; the docketing statement filed pursuant to Section 63-4 (a) (3); any relevant appellate motions or orders that complete or perfect the record on appeal; and, in appeals to the supreme court upon grant of certification for review, the order granting certification and the opinion or order of the appellate court under review.

A signed judgment file is not required in the following noncriminal matters: habeas corpus matters based on criminal convictions; pre- and postjudgment orders in matters claiming dissolution of marriage, legal separation or annulment; prejudgment remedies under chapter 903a of the General Statutes; and actions of foreclosure of title to real property.

In administrative appeals, part one of the appellant's appendix also shall meet the requirements of Section 67-8A (a). In criminal or habeas appeals filed by incarcerated self-represented parties, part one of the appendix shall be prepared by the appellee. See Section 68-1. In these appeals, the filing of an appendix by incarcerated self-represented parties shall be in accordance with subsection (c) of this rule.

(2) Part two of the appellant's appendix may contain any other portions of the proceedings below that the appellant deems necessary for the proper presentation of the issues on appeal. Part two of the appellant's appendix may be used to excerpt lengthy exhibits or quotations from the transcripts or to comply with other provisions of the Practice Book that require the inclusion of certain materials in the appendix. To reproduce a full transcript or lengthy exhibit when an excerpt would suffice is a misuse of an appendix. Where an opinion is cited that is not officially published, the text of the opinion shall be included in part two of the appendix.

(c) The appellee's appendix should not include the portions of the proceedings below already included in the appellant's appendix. If the appellee determines that part one of the appellant's appendix does not contain portions of the proceedings below, the appellee shall include any such items that are required to be included pursuant to Section 67-8 (b) (1) in part one of its appendix. Where an appellee cites an opinion that is not officially published and is not included in the appellant's appendix, the text of the opinion shall be included in part two of the appellee's appendix. Part two of the appellee's appendix may also contain any other portions of the proceedings below that the appellee deems necessary for the proper presentation of the issues on appeal.

(d) In appeals where personal identifying information is protected by rule, statute, court order or case law, and in appeals that have been ordered sealed in part or in their entirety or are subject to limited disclosure pursuant to Section 77-2, all briefs and appendices shall be prepared in accordance with Section 67-1.
