

ADVISORY COMMITTEE ON APPELLATE RULES

January 24, 2008

The meeting was called to order by Justice Schaller at 2:00 p.m. The following committee members were in attendance:

Justice Barry Schaller, co-chair  
Chief Judge Joseph Flynn, co-chair  
Attorney Michele Angers  
Attorney John DeMeo  
Attorney William Gallagher  
Attorney Gail Giesen  
Attorney Wesley Horton  
Attorney Sheila Huddleston  
Attorney Kevin Loftus  
Attorney Susan Marks  
Hon. Eliot Prescott  
Attorney Holly Sellers  
Attorney Giovanna Weller

Also in attendance were:

Justice Peter Zarella  
Attorney Jill Begemann  
Attorney Dan Klau

Justice Schaller opened the meeting by stating that he is honored to join this prestigious group as its co-chair, and is pleased to be working with Chief Judge Flynn who continues as a co-chair of the committee.

Justice Schaller then asked that item II.c. on the agenda be discussed first. Following agreement by the committee, Justice Schaller then invited Justice Zarella to speak to this item.

**II. NEW BUSINESS**

*(c) Proposal to allow electronic briefs in the appellate courts.*

Justice Zarella began by stating that briefing of appellate cases should be brought into the 21st century. He suggests that this process should eventually get to the point where much paper filing is eliminated. To that end, he participated in a meeting with Attorneys Kim Knox and Dan Klau of the CBA Appellate Practice Section to discuss possible steps toward that goal. He

noted that Attorney Klau is particularly experienced and knowledgeable in appellate practice and the use of technology.

A demonstration of one possible solution was presented with briefs and transcripts filed on a CD with active links from cites in the brief to cases and to pages in the transcript. Any additional material that is available electronically could also be included, possibly reducing the paper record or exhibits filed with the case on appeal. Advantages include easing the burden on the court to store and manage files, improved ability to easily navigate to cites, and enhanced access to archived cases, including records and briefs. Discussion ensued addressing resources that may be needed in law offices and in the courts; discussion is to continue at future meetings.

Justice Schaller then invited Justice Zarella to speak to item II.a. on the agenda, concerning amicus briefs. Justice Zarella noted that the proposal tracks the federal rule, making the rationale supporting that rule germane to this committee's discussion. Justice Schaller thanked Justice Zarella for his time. The Committee then returned to the meeting agenda.

## **I. OLD BUSINESS**

(a) *Minutes of February 8, 2007 meeting.*

The minutes were approved as distributed.

(b) *Minutes of March 27, 2007 meeting.*

The minutes were approved as distributed.

(c) *Proposal by Attorney William Gallagher authorizing filing by fax of motions for extension of time*

Attorney Angers noted that, due to the volume of filing, resources for implementation would be an issue if this proposal is adopted. Justice Schaller noted that fax is an anachronism. Chief Judge Flynn asked that implementation be explored so the committee can fully discuss the issues raised.

(d) *Letter from Attorney Richard P. Weinstein regarding preargument settlement program and vacating of trial court judgments*

Justice Schaller invited Attorney DeMeo to share a conversation he had with Justice Santaniello following the

Committee's last meeting. Attorney DeMeo reported that PAC judges were not being asked to vacate, but Justice Santaniello does recognize the issue raised by Attorney Weinstein's letter. PAC judges, by statute, do have the same powers as trial court judges. Attorney Horton suggested that Attorney DeMeo's memo resolves the problem, and that an amendment to §63-10 is therefore not necessary at this point, especially in light of the fact that such an amendment might create a conflict with the statute. Justice Schaller then suggested it should be sufficient for Justice Santaniello to send a letter to the PAC judges asking that they refrain in light of the Torres case. Attorney Horton moved to adopt Justice Schaller suggestion, seconded by Attorney Gallagher, and the motion passed unanimously.

*(e) Proposal by Attorney Wesley Horton concerning Practice Book § 63-3 (Filing of Appeal in General; Number of Copies)*

Attorney Horton moved adoption of the proposal, seconded by Attorney Gallagher. Judge Prescott pointed out that the file may be stamped in where the judge is, rather than where the file is. This could create ambiguity, especially where a file has been transferred. Attorney Huddleston suggested the provision governing petitions for certification may provide a solution, by permitting the fee to be paid at any trial court location. The proposal was tabled for development of a revised proposal by Attorney Huddleston.

*(f) Proposal by Attorney Wesley Horton concerning Practice Book § 67-7 (The Amicus Curiae Brief)*

Attorney Horton stated that the purpose of this proposal is to make clear what the requirements are for amici. Attorney Angers pointed out that the wording is duplicative of the existing rules governing briefing. Discussion addressed the need for additional clarity in the rule. Attorney Horton moved adoption, seconded by Attorney Marks, and the proposal was unanimously approved.

*(g) Proposal by Staff Attorneys' Office concerning § 63-1 (Time to Appeal)*

Attorney Giesen stated that this proposal is a minor change to clarify the rule. Motion by Chief Judge Flynn, seconded by Attorney Angers, passed unanimously.

## II. New Business

*(a) Proposal for amendment to amicus rules to provide that amicus brief indicate whether counsel or party contributed monetarily to the preparation or submission of amicus brief*

Justice Schaller renewed discussion by reiterating Justice Zarella's earlier comments regarding this proposal. Attorney Horton moved that a draft be prepared by the Staff Attorneys Office, seconded by Attorney Gallagher. The motion passed unanimously. Attorney Marks suggested particular note be made of the United State Supreme Court rule 37.

*(b) Proposal to make the parties (and/or) their counsel responsible, along with the clerk of the trial court, for preparing a complete and accurate record to be forwarded to the AC or SC for cases on appeal*

Justice Schaller stated that this issue concerns the record that exists at the trial court, and does not refer to the record prepared pursuant to appellate rule. He posited exhibits as an example for discussion, although the issue is not limited to that element. Attorney Angers shared information about an initiative within her office that is being pursued with cooperation of Court Operations. The purpose of the initiative is to review existing procedures to identify where problems occur, and to develop improvements to those procedures accordingly. Attorney Angers stated that, at this point, there are four issues that have emerged: 1) the number of days for the trial court to transmit the file; 2) identification of the appellate event triggering such transmittal (currently tied to assignment for argument); 3) resolution of internal issues raised by partial transmittals, and 4) post-appeal documents.

Discussion addressed the role of trial counsel and the trial court clerks' offices in this regard as well as the timing that will best serve all courts. Chief Judge Flynn underscored the importance of a complete record to full appellate review. In extreme cases, the Appellate or Supreme Court may need to seek reconstruction of a file where documents are missing, which is problematic for all. Following further discussion, the proposal was tabled by consensus pending further information regarding the current initiative in the Chief Clerk's Office.

*(c) Proposal to allow electronic briefs in the appellate courts*

Justice Schaller renewed discussion of this item by recognizing that more discussion will be needed before a specific proposal is developed. He expressed appreciation to Attorney Klau for his willingness to be involved in this process. Chief Judge Flynn commented that particular attention should be given to privileged information that may be in a brief or appendix. Attorney Gallagher reinforced Chief Judge Flynn's concern. Attorney Huddleston asked how these proposals might be drafted to accommodate pro se parties. Attorney Klau stated that submission of documents on disk was discussed with Justice Zarella as one possible means to receive information that would include both full briefs and redacted briefs to differentiate between public and privileged information. Following further discussion, the committee tabled the proposal to be raised as a future agenda item.

*(d) Proposal for amendment to Practice Book § 61-6 (a) (2) regarding appeal of ruling following judgment rendered upon conditional plea of nolo contendere*

Justice Schaller stated that this proposal was drafted by Attorney Horwitch of the Legal Services unit within Court Operations. Attorney Giesen stated that her understanding of the impetus for the proposal was to conform the rule and statute. Attorney Horton moved for its adoption, seconded by Chief Judge Flynn. Discussion resulted in redrafting the proposal for clarity. Attorney Horton accepted the redrafted language as a friendly amendment to his motion, which was accepted by Chief Judge Flynn who had seconded the motion. The proposal was unanimously adopted.

*(e) Such other matters as may come before the Committee*

There being no other business, the Committee adjourned.