

## Meeting of the Advisory Committee on Appellate Rules

Thursday, April 6 at 2:00 p.m.

Justice D'Auria called the meeting to order at 2 p.m.

### **Members in attendance:**

Justice Gregory T. D'Auria, Co-Chair  
Judge Eliot D. Prescott, Co-Chair  
Attorney Jeffrey Babbin  
Attorney Colleen Barnett  
Attorney Jill Begemann  
Attorney Jennifer Bourn  
Attorney Carl Cicchetti  
Attorney Timothy Costello  
Attorney Susan Hamilton  
Attorney James Healey  
Hon. Sheila Huddleston  
Attorney Daniel J. Krisch  
Attorney Eric Levine  
Attorney Jessie Opinion

Attorney Joshua Perry  
Attorney René Robertson  
Attorney Giovanna Weller

### **Members not in attendance:**

Attorney Richard Emanuel  
Attorney Paul Hartan  
Attorney Wesley Horton  
Attorney Charles Ray

### **Additional Attendees:**

Attorney Kenneth Bartschi (for Attorney Horton)  
Attorney Julie Lavoie

This meeting was held in the Attorney Conference Room at the Connecticut Supreme Court. Justice D'Auria welcomed Attorney Timothy Costello to the committee.

## **I. OLD BUSINESS**

### **A. Approval of minutes of October 27, 2022.**

Attorney Weller moved to approve the minutes. Attorney Bourn seconded. The motion passed unanimously.

### **B. Whether to adopt § 66-9 regarding disqualification of appellate jurists and propose an amendment to Rule 2.11 of the Code of Judicial Conduct regarding judicial disqualification.**

Judge Prescott updated the committee on the progress of the proposal before the Rules Committee of the Superior Court. Subsection (b) of § 66-9 mirrors Comment 7 to Rule 2.11 of the Code concerning the disqualification of appellate jurists. The proposal to adopt § 66-9 has been revised since the last meeting to remove language from subsection (c) regarding referring the issue of disqualification to another judge or justice, as that is a matter within the inherent discretion of the judge.

Attorney Barnett moved to adopt § 66-9. Attorney Robertson seconded.

During discussion, Attorney Bartschi proposed an amendment to subsection (b) to clarify it as follows:

(b) A justice of the Supreme Court or a judge of the Appellate Court is not automatically disqualified from acting in a matter merely because: (1) the justice or judge previously practiced law with the law firm or attorney who filed an amicus brief in the matter; or (2) or the justice's or judge's spouse, domestic partner, parent, or child, or any other member of the justice's or judge's family residing in his or her household is practicing or has practiced law with the law firm or attorney who filed an amicus brief in the matter ~~such law firm or attorney~~; or (3) an attorney or party to the matter has filed a lawsuit against the justice or judge or filed a complaint against the justice or judge with the Judicial Review Council or an administrative agency.

The motion to adopt the proposal as amended passed unanimously.

**C. Whether to amend § 66-6 regarding the time for filing a motion for review.**

Attorney Barnett and Attorney Robertson explained that there was ambiguity in this rule as to when the ten days for filing a motion for review begins when the order is issued in connection with a motion that is filed in the trial court. At the previous meeting of this committee, Attorney Bourn had expressed concerns. Those concerns had since been resolved, and the amendment was presented for a vote.

Judge Prescott moved to adopt the proposal. Attorney Krisch seconded.

During discussion, Attorney Babbin proposed amendments to the third sentence of subsection (b) as follows:

If the order is issued in connection with a motion that was filed with the appellate clerk, the motion for review shall be filed within ten days from the issuance of notice by the appellate clerk of the order from the trial court sought to be reviewed. Otherwise, if notice of the order sought to be reviewed is given by the trial court in open court with the party seeking review present, the time for filing the motion for review shall begin on that day; if notice is given to the party seeking review only by mail or by electronic delivery, the time for filing the motion for review shall begin on the day that notice was sent to counsel of record by the clerk of the trial court.

The motion to adopt the proposal as amended passed unanimously.

**D. Whether to amend § 62-8 regarding appearances after a case is ready.**

Attorney Cicchetti presented an updated proposal, which deleted the requirement that counsel file a motion for permission to file an appearance after the case is ready. Any such appearance will simply be forwarded to the court by the appellate clerk for recusal screening purposes.

Attorney Robertson moved to adopt the proposal. Attorney Bourn seconded. The motion passed unanimously.

**II. NEW BUSINESS**

**A. Whether to amend §§ 62-6 and 60-4 regarding the definition of "signature."**

There are two aspects to this proposal. Attorney Robertson explained that the purpose of the amendments to § 62-6 (a) and (b) was to address filings by self-represented parties and to remove any conflict between that section and § 60-4 by simply deleting the definition of signature from the latter.

Attorney Begemann explained that the proposal to adopt subsection (c) of 62-6 was to allow an attorney to assist a client in the preparation of appellate filings without filing an appearance. Judge Prescott clarified that this proposal does not require the disclosure of the name of counsel who assisted in preparing the filing. It is comparable to § 4-2 (c) of the Superior Court rules.

Attorney Krisch moved to adopt the proposal. Attorney Robertson seconded. The motion passed unanimously.

**B. Whether to amend § 60-7 regarding electronic filing and payment of fees.**

Attorney Robertson explained that the proposed change was to make the rules consistently refer to a self-represented party's "E-Services user identification."

Attorney Weller moved to adopt the proposal. Attorney Krisch seconded. The motion passed unanimously.

**C. Whether to amend § 63-4 regarding additional papers to be filed by the appellant and appellee subsequent to the filing of the appeal.**

There are two aspects to this proposal. Attorney Opinion explained that § 63-4 (a) (4) (C) was adopted to assist the clerk's office with its obligations under VAWA; the proposed amendment requests more specific information to assist the Staff Attorney's Office in screening appeals in civil matters for preargument conferences. Attorney Bourn expressed concern with respect to the obligation to provide this additional

information in all appeals (as it is part of the docketing statement), which may prove especially challenging to counsel in an appeal in a criminal case or habeas case. The prefatory phrase "to the extent known or reasonably ascertainable by the appellant" as it exists in the rule was discussed.

Attorney Babbin noted that the phrase "causes of action" in the proposed amendment to § 63-4 (a) (4) (B) could be confusing as to whether it referred to an appeal from a partial judgment. That phrase was replaced with "cases."

With respect to the second aspect of this proposal, Attorney Cicchetti explained that appellate forms were being created to assist filers with meeting their obligation to file § 63-4 papers within ten days of filing the appeal. The new forms for the preliminary statement of issues, designation of the proposed contents of the clerk appendix, and certificate regarding transcripts are optional under new subsection § 63-4 (d). Attorney Krisch noted that the use of the preargument conference form is *not* optional under § 63-4 (a) (5). Accordingly, subsection (d) was amended to provide as follows:

The use of the forms indicated in subdivisions (1), (2), and (3) of subsection (a) is optional. The party may instead draft documents in compliance with the rules.

It was noted that the proposed commentary should be updated to reflect the changes to § 63-4 (a) (4) (C) and to accurately reflect the list of optional forms.

Attorney Krisch moved to adopt the proposal as amended. Attorney Weller seconded. The motion passed unanimously.

**D. Whether to amend § 83-1 regarding certification pursuant to General Statutes § 52-265a in cases of substantial public interest.**

Attorney Cicchetti indicated that the chief justice must act on such applications within seven days, as required by statute. The proposal therefore requires that any response to such application be filed within five days.

Attorney Robertson moved to adopt the proposal. Attorney Babbin seconded. The motion passed unanimously.

**E. Whether to amend § 67-2 regarding paper briefs and appendices for filers excluded or exempt from electronic filing.**

Attorney Robertson presented this proposal, which was to make the number of physical copies of briefs and appendices that are required from exempt / paper filers to match the number of physical copies that are required to be filed by everyone else.

Attorney Barnett moved to adopt the proposal. Attorney Krisch seconded. The motion passed unanimously.

**F. Whether to amend § 67-2A regarding the format of electronic briefs and appendices.**

Attorney Robertson explained that the purpose of the proposal was to loosen up some of the formatting requirements while still maintaining consistency in appearance and readability of the briefs received. To that end, the proposal permits a wider array of acceptable serif fonts, a list of which is available on the judicial branch website, and between 1.3x and 1.5x uniform line spacing. The proposal makes it explicit that covers of briefs should be white and removes the requirement in (h) concerning the electronic confirmation receipt, which is now superfluous. There was some discussion as to whether the rules should contain a preferred font, whether preferred fonts versus acceptable fonts should be included in the guidelines or mentioned in the commentary, and whether 1.5x line spacing should be the standard, but no changes to the proposal were made.

Attorney Weller moved to adopt the proposal. Attorney Hamilton seconded. The motion passed unanimously.

**G. Whether to amend § 67-3A regarding the time for filing electronic briefs and party appendices and § 67-5A regarding reply briefs.**

Attorney Cicchetti presented this proposal, which was to address inconsistencies in the rules identified by Attorney Babbin at the last meeting.

Attorney Krisch moved to adopt the proposal. Attorney Babbin seconded. The motion passed unanimously.

Before moving onto the next proposal, Justice D'Auria and Judge Prescott thanked everyone on the committee who joined the work group to provide their input into various proposals regarding reducing the word counts in appellate briefs. That matter has been tabled for at least one year to gather more data.

**H. Whether to amend §§ 66-2, 66-3, 67-7A, 77-1, 78-1, 78a-1, 78b-1, 81-2, 81-3, 84-5 and 84-6 regarding the procedures and word limits for filing motions, amicus briefs and applications, petitions for review, and petitions for certification.**

Attorney Robertson explained that, in addition to changing from page limits to word limits, the proposal was intended to minimize the number of times a party had to refer to more than one rule to find out what is required to file an appellate document. So, for example, instead of referring to §§ 66-2 and 66-3 (which pertain to motions), the formatting and timing requirements for filing amicus applications, petitions for review, and petitions for certification are contained within the rule authorizing the filing.

Committee members agreed with the thorough proposal but noticed two typological inconsistencies: (1) all references to line spacing "between 1.3 and 1.5" should be updated to provide "between 1.3x and 1.5x"; and (2) because oppositions are not required, rules containing instances of the phrase "An opposition . . ." should be updated to provide "Anyopposition . . ." (§§ 62-2 (a) [first sentence of the second paragraph only], 77-1 (b); 78a-1 (b); 78b-1 (b)).

Attorney Krisch moved to adopt the proposal as amended. Attorney Robertson seconded. The motion passed unanimously.

**I. Whether to recommend a rule governing appellate intervention.**

This issue was raised by Attorney Perry. The issue has come up in several recent cases before the U.S. Supreme Court and a proposed amendment to the federal Rules of Appellate Procedure is presently being considered. The matter was referred to the work group.

**III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE**

None.

**IV. NEXT MEETING**

It is anticipated that the next meeting will be in fall 2023.

The meeting adjourned at 3:03 p.m.

Respectfully submitted,

Colleen Barnett