

Meeting of the Advisory Committee on Appellate Rules

Thursday, April 7, 2022

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 Richard Emanuel

Attorney Susan Hamilton

Attorney Paul Hartan

Attorney James Healey

Attorney Wesley Horton

Attorney Clare Kindall

Attorney Daniel J. Krisch

Attorney Eric Levine

Attorney Bruce Lockwood

Attorney Jessie Opinion

Attorney Charles Ray

Attorney René Robertson

Members not in attendance:

Hon. Sheila Huddleston

Attorney Giovanna Weller

Additional Attendees:

Justice Andrew McDonald (for agenda items IB and IC)

Attorney Michael Skold

Attorney Andrew Redman

This meeting was held in the courtroom of the Connecticut Appellate Court.

I. OLD BUSINESS

A. Approval of minutes of October 28, 2021.

Attorney Horton moved to approve the minutes. Attorney Kindall seconded. The motion passed unanimously.

B. Whether to amend the rules to require a more comprehensive listing of interested parties.

This matter was taken up when Justice McDonald arrived at the meeting. The proposed amendments affect §§ 60-4, 63-4, 62-5, 66-3, 67-4, 67-5, 67-7, 67-7A, 72-1, 73-1, 81-2, 81-3, 82-3, 83-1, 84-5, and 84-6. The amendment to § 60-4 adds a definition of "certificate of interested entities or individuals." That filing is intended to provide the court with information regarding the principals behind business entities appearing before the court. The remaining amendments describe when such a certificate is required to be filed. Justice McDonald described the disclosure sought as consistent with federal practice, and as providing helpful information to the court without being unnecessarily

burdensome on litigants.

There was discussion concerning whether the courts may wish to indicate in commentary that nonparty insurers are not "interested" within the meaning of this proposal. Attorney Krisch noted that the same proposal should be considered by the Rules Committee of the Superior Court. Justice McDonald indicated he would raise it with that committee.

Attorney Babbin suggested amending the proposal to delete possibly redundant and less specific language from § 63-4 (a) (4) (A) (beginning after "counsel of record" and through the semicolon prior to (B)). After discussion, it was suggested that some of that language could be captured by amending the final sentence of the "catchall" provision in § 60-4 to read as follows (changes underlined): "The certificate shall also state whether the party knows of any direct or indirect ownership, ~~or~~ controlling or legal interest for that party that counsel of record thinks could reasonably require a judge to disqualify himself or herself under Rule 2.11 of the Code of Judicial Conduct."

Attorney Horton moved to adopt the proposal, as amended. Attorney Babbin seconded. The motion passed unanimously.

C. Whether to add § 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 presented this proposal. There is presently no appellate rule governing disqualification. The relevant Superior Court rule (§ 1-22 (b)) suggests that a hearing is *required* when a party to the proceeding has filed a complaint with the Judicial Review Council or a lawsuit against the jurist. The proposed new rule is consistent with the Superior Court rules and Code of Judicial Conduct, but removes the requirement of a hearing. An appellate jurist *may* refer the disqualification issue to another judge who *may* conduct a hearing. Justice McDonald indicated that a similar proposal is being considered by the Rules of Committee of the Superior Court. Following discussion, the Committee did not express any significant disagreement with the proposal, and the matter was tabled for consideration at a future meeting.

D. Whether to amend the rules (new chapter 78b) to provide for review of a decision denying an application for a fee waiver for the commencement of a habeas action or a civil action.

There is pending legislation that would allow this review by the Appellate Court. If the legislation passes, this rule change would implement it.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

E. Whether to amend § 70-9 regarding coverage of court proceedings by cameras and electronic media.

Justice D'Auria explained that the proposed changes conform to current practice before the Supreme Court, which also includes an admonishment reminding counsel of record not to disclose the identity or location of protected persons in certain cases. Attorney Begemann explained that a similar proposal was being considered by the Rules Committee of the Superior Court and that External Affairs supports the changes. Upon inquiry, Attorneys Lockwood and Bourn expressed no reservations.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

II. NEW BUSINESS

A. Whether to amend § 67-8 regarding the party appendix.

Attorney Kindall proposed altering the requirement that parties provide the text of an unpublished opinion only when the case is not officially published "in a reporter or is not available in either the LEXIS or Westlaw databases." Attorney Begemann explained that the workgroup expressed concerns that (1) these private databases are not publicly available and therefore may put self-represented litigants at a disadvantage; and (2) enshrining this in a rule is complicated when the judicial branch may change vendors (currently the branch uses Westlaw and not LEXIS). Matters discussed included: the length of party appendices when unpublished cases are included; hyperlinking to cases in party appendices may give those cases disproportionate emphasis; there is public access to these databases at law libraries around the state; bound reporters are also published by for-profit entities; pros and cons of instead requiring dual citation to both databases in the table of authorities.

The matter was tabled for discussion at a future meeting.

B. Whether to amend § 63-4 (a) (4) to remove subparagraph (D) (whether there were exhibits in the trial court).

Attorney Robertson explained that although subparagraph (D) had been added to the rules recently, it was no longer needed in light of changes to how the appellate clerk receives exhibits from the trial court.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

C. Whether to amend § 84-5 regarding the form of petitions.

Justice D'Auria explained the rule expressed the Justices' preference for the version of the Appellate Court opinion published in the Law Journal, which is available for free on the judicial branch website. There was some discussion of making the change a requirement, but an alternative proposal was not pursued.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

D. Whether to amend § 63-3 to conform to electronic filing and available technological capabilities.

Attorney Cicchetti explained that notices from the appellate clerk would replace the delivery of the "copy of the appeal form" as required under the present rule.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

E. Whether to amend § 84-11 (d) to clarify the papers to be filed upon the granting of a petition for certification, and add § 84-10A regarding the record upon granting of certification.

Attorneys Cicchetti and Robertson explained that proposal permitted the filing of a designation of the clerk's appendix in an appeal to the Supreme Court following the grant of certification and what constitutes the "record" in such appeals.

The following amendments to the proposal were discussed and met with approval: delete from the proposal the second paragraph of the new § 84-10A; change uses of the word "affirmation" to "affirmance." The first sentence of § 84-11 (b) now begins: "Within ten days of the filing of the appeal, the appellee may file a statement of alternative grounds for affirmance or adverse rulings or decisions to be considered in the event of a new trial, provided that such party"

Attorney Horton moved to adopt the proposal, as amended. Attorney Kindall seconded. The motion passed unanimously.

F. Whether to amend 63-10 regarding preargument conferences.

Judge Prescott explained that this proposal made technical changes to the rule to refer to the presiding judge at the preargument conference in a consistent manner.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

G. Whether to amend §§ 67-7 and 67-7A regarding the filing of amicus briefs.

Note: Proposals II G and II H were prompted by a letter from Attorney Jeffrey Gentes from the Connecticut Fair Housing Center. Attorney Gentes proposed an amendment to address the filing of an amicus application in support of a party that elects not to file a brief. Attorney Robertson explained the text of the proposed amendment §§ 67-7 and 67-7A as drafted by the workgroup, which tied the time for filing an amicus application to the filing of the appellant's brief. Attorney Kindall, Attorney Healey, and Attorney Horton voiced concerns with the proposal as drafted. If no appellee's brief is filed, the amicus

applicant could include that as part of a "good cause for late filing" statement under § 66-3. The proposal was withdrawn.

H. Whether to recommend the adoption of the uniform style of citation described in *The Bluebook*.

Attorney Gentes submitted this recommendation. Attorney Levine addressed the proposed recommendation from the perspective of the Reporter's Office. He and others noted that the appellate clerk did not monitor compliance with any particular style manual and would not return or reject a filing for its citation format. Other members of the Committee voiced strong opposition to the proposal. The recommendation was not adopted.

Judge Prescott indicated that the co-chairs would let Attorney Gentes know of this outcome by letter.

I. Whether to amend § 77-2 to require the filing of redacted and unredacted briefs when discussing sealed materials.

Attorney Ken Bartschi sent this proposal to adopt a new subsection (b) to facilitate the process by which a party can file an unredacted appellate brief when that party wishes to discuss matters that are subject to a trial court sealing order. The work group prepared a revised proposal, which was presented to Attorney Bartschi. Attorney Begemann indicated that Attorney Bartschi agreed with the revised proposal. Attorney Robertson explained the revised proposal, which included providing notice to the clerk's office and a cross-reference to the rules regarding child protection appeals.

Attorney Horton moved to adopt the revised proposal. Attorney Kindall seconded. The motion passed unanimously.

J. Whether to amend § 70-4 regarding the time allowed for oral argument.

Judge Prescott explained that the proposal was intended to clearly state in the rules the different practices of the Supreme and Appellate Courts with respect to the time allotted for oral arguments.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

K. Whether to amend § 61-9 regarding the filing of amended appeals.

Attorney Cicchetti explained that an amended appeal is not actually filed "in the same manner" as an original appeal, and the proposed amendment more closely conforms to e-filing practice. Attorney Babbini suggested that the proposal be amended to state "in the pending appeal using form JD-SC-033, along with the certification"

Attorney Horton moved to adopt the proposal, as amended. Attorney Kindall seconded. The motion passed unanimously.

L. Whether to amend Chapter 65 regarding the transfer of appellate matters.

Attorney Robertson explained the purpose of the reorganization of this chapter and proposed adoption of §§ 65-1A and 65-5. It was clear that no substantive changes were intended. Rather, the proposal clarifies existing practice and consolidates, in new § 65-5, information that had been scattered across multiple rules concerning proceedings after transfer.

Attorney Horton moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE

None.

IV. NEXT MEETING

Anticipated to be sometime in Fall, 2022.

The meeting adjourned at 3:50 p.m.

Respectfully submitted,

Colleen Barnett