

## Advisory Committee on Appellate Rules

April 18, 2019

The meeting was called to order by Justice Palmer at 10 a.m. in the Attorney Conference Room of the Supreme Court.

### Members in attendance:

Justice Richard N. Palmer, Co-Chair  
Chief Judge Alexandra D. DiPentima, Co-Chair  
Attorney Jeffrey Babbin  
Attorney Colleen Barnett  
Attorney Jill Begemann  
Attorney Kathryn Calibey  
Attorney John DeMeo  
Attorney Richard Emanuel  
Attorney Paul Hartan  
Attorney Wesley Horton  
Hon. Sheila Huddleston  
Attorney Clare Kindall  
Attorney Eric Levine  
Attorney Bruce Lockwood  
Attorney Jamie Porter

Attorney Charles Ray  
Attorney Rene Robertson  
(for Attorney Carolyn Ziogas)  
Attorney Lauren Weisfeld

### Members not in attendance:

Attorney Daniel J. Krisch  
Attorney Giovanna Weller  
Attorney Carolyn Ziogas

### Additional attendees:

Attorney David Goshdigian

### Preliminary matters:

Justice Palmer welcomed Attorney Clare Kindall, Solicitor General, and Attorney Bruce Lockwood, Supervisory Assistant State's Attorney, as members of the committee. Chief Judge DiPentima let the members of the committee know that the co-chairs were considering whether the procedures of this committee should more closely align with General Statutes § 51-14.

## I. OLD BUSINESS

### A. Approval of minutes of October 2, 2018.

Chief Judge DiPentima noted that the response from the offices of the state's attorney and the public defender to the proposal that denial of certification to appeal in a habeas corpus case be subject to a motion for review rather than an appeal remains outstanding.

Attorney Porter moved to approve the minutes. Judge Huddleston seconded. The minutes were approved unanimously, with Attorney Kindall abstaining.

### B. Whether to amend § 70-6 regarding reconsideration when the court is evenly divided and § 71-5 regarding reconsideration "en banc."

Justice Palmer reported that the justices of the Supreme Court were going to adopt a policy that would address this issue and he invited input by e-mail. No action was taken on the proposal to amend the rules.

**C. Whether the rules should be amended to allow for the use of images and hyperlinks in briefs.**

Attorney Begemann reported that a separate committee addressing e-briefing is considering the issue of images in briefs. Attorneys Hartan and Robertson addressed the challenges currently posed by hyperlinks in appellate filings and why the appellate clerk's office encourages parties not to use them whenever possible. Currently, the electronic filing system does not have any way to ensure the integrity of the links, i.e., hyperlinks could direct to malicious content. The e-briefing committee is looking into these issues, as it is expected that hyperlinks will be allowed in the future. No proposal with respect to a rule change would be considered at this time.

**D. Proposal to amend § 63-7 so that it is consistent with § 43-33.**

Justice Palmer addressed the proposal. Attorney Horton moved to adopt the proposal. Attorney Porter seconded. The proposal was adopted unanimously.

**E. Whether the rules should be amended to require that court reporters/monitors transcribe audio/video exhibits played for the jury.**

Attorney Begemann reported that, in November, 2015, the judicial branch adopted a policy with respect to this issue. It retracted that policy in October, 2016, because it proved to be unworkable for the monitors to accurately transcribe a recording of a recording. The matter was not referred to the appellate rules work group in light of the judicial branch's current policy.

**II. NEW BUSINESS**

**A. Proposal to amend § 61-11 (c) to eliminate automatic appellate stays in cases involving civil protection orders.**

Justice Palmer presented the proposal on behalf of Judge Abrams. Attorney Horton moved to adopt the proposal. Attorney Porter seconded. The proposal was adopted unanimously.

**B. Proposal to amend § 63-10 to exempt foreclosure appeals from the preargument conference program unless all other appearing parties agree that the case should go to PAC.**

An amended proposal was circulated to the committee. Chief Judge DiPentima explained the concern expressed by the Appellate Court judges that, generally speaking, foreclosure cases are not resolved in PAC and the process only serves to add delay. Attorney DeMeo discussed logistical concerns with respect to how parties in a foreclosure case could request a preargument conference. In the amended proposal, the third sentence of the rule was replaced with: "In any exempt case, all parties appearing in the appeal may file a joint request for a preargument conference with the appellate clerk." The proposal was further amended to add "and participating" following "appearing." Attorney Horton moved to adopt the proposal as amended. Attorney Babbitt seconded. The proposal was adopted unanimously.

**C. Proposal to amend § 77-1 (b) to include the statutory language contained in General Statutes § 51-164x regarding exemptions.**

Attorney Porter explained the proposal on behalf of Judge Prescott, who noted that the rule should be clarified to make it consistent with § 51-164x. Attorney Horton moved to adopt the proposal. Attorney Levine seconded. The proposal was adopted unanimously.

**D. Proposal to amend § 70-4 regarding changes to counsel arguing the appeal.**

Attorney Begemann explained the proposal, which was to ensure that the clerk in court and the judges know who to expect to appear at argument. The committee discussed concerns with respect to the form of the notification and whether "prior to the date of the argument" provided sufficient guidance. The proposal was amended to read, in relevant part: "the attorney who will be arguing the appeal shall file a letter notifying the court of the change as soon as possible prior to argument." Attorney Horton moved to adopt the proposal, as amended. Attorney Ray seconded. The proposal was adopted unanimously.

**E. Proposal to amend §§ 63-4 to require, in cases in which there is a firm appearance, that counsel include a list of all attorneys who materially participated in the case and 67-7 to require amicus counsel to provide a list of all attorneys who materially participated in the brief.**

The proposal was drafted to address concerns raised by Justice McDonald and seeks to provide appellate judges adequate information for recusal purposes. Members of the committee expressed serious concerns about the burden that this proposal would place on members of the bar. Query whether "materially participated" included a summer associate who drafted a trial court filing or an attorney who argued at one short calendar or an attorney who drafted a filing years before and was no longer at the law firm. It was noted that there was no analogous problem in federal practice because federal courts did not allow "firm" appearances. Although it was suggested that material participation could be limited to the name of counsel in the signature block of the filing, that limitation would not address the issue with respect to certain civil or marital dissolution cases, which can span several boxes of filings over many years. Justice Palmer indicated that he would discuss the matter with Justice McDonald. The proposal was tabled until the next meeting.

**F. Proposal to amend §§ 81-2 and 84-5 to require that petitions for certification contain a table of contents and, in § 84-5, to require appellate counsel to include a copy of the trial court's memorandum of decision with any petition for certification when the Appellate Court opinion from which certification is sought is a per curiam opinion.**

Attorneys Robertson and Levine presented the proposal. With respect to the table of contents requirement in §§ 81-2 and 84-5, the proposal was amended to add language similar to that found in § 67-2 (c) concerning consecutive pagination of the appendix. Attorney Horton moved to adopt the proposal, as amended. Attorney Calibey seconded. The proposal was adopted unanimously.

**G. Proposal to amend §§ 72-1 and 72-3 to require that writs of error be filed in the Appellate Court.**

Attorney DeMeo briefly explained the history of this proposal. The judicial branch has proposed an amendment to the relevant statute, § 51-199 (b) (10), which requires that writs of error be filed directly in the Supreme Court, to require that writs of error be filed in the Appellate Court. It is intended that this amendment to the appellate rules will go into effect on the effective date of the statutory amendment. Attorney Horton moved to adopt the proposal. Attorney Ray seconded. The proposal was adopted unanimously.

**H. Proposal to amend the child protection rules to change the word "juvenile" to "child protection."**

Attorney Levine presented the proposal to address some inconsistent language in chapter 79a. Attorney Horton moved to adopt the proposal. Attorney Ray seconded. The proposal was adopted unanimously.

Addendum to the minutes dated April 24, 2019: Following the meeting, this proposal was marked over until the next meeting for consideration of whether these rules should also be amended to delete the word "youth" consistent with a recent statutory amendment and proposed amendments to the Superior Court rules.

**I. Whether to amend § 62-9 (d) (3) pursuant to *State v. Mendez*, 185 Conn. App. 476, 485, n.6 (2018) (*Prescott, J.*, concurring).**

This proposal was marked over for consideration by the appellate rules work group. Attorney Weisfeld would report back to Attorney Begemann as to whether her office had any concerns with the proposal.

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

Attorney Kindall discussed an issue that can arise when trying to file an amicus brief in a child protection case or other case in which the information is "protected" in the e-filing system. The appellate clerk's office and/or IT would look into the matter.

**IV. NEXT MEETING**

The date of the next meeting was left to the discretion of the chairs. It was expected to be scheduled for fall 2019.

Respectfully submitted,

Colleen Barnett