

Advisory Committee on Appellate Rules
April 23, 2018

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 Kathryn Calibey

Attorney John DeMeo

Attorney Marjorie Dauster

(for Attorney Susan Marks)

Attorney Richard Emanuel

Attorney Paul Hartan

Attorney Wesley Horton

Hon. Sheila Huddleston

Attorney Daniel Krisch

Attorney Eric Levine

Attorney Jamie Porter

Attorney Charles Ray

Attorney Jane Rosenberg

Attorney Lauren Weisfeld

Attorney Carolyn Ziogas

Members not in attendance:

Attorney Susan Marks

Attorney Giovanna Weller

Additional attendees:

Attorney Jill Begemann

Attorney David Goshdigan

Preliminary matters:

Justice Palmer welcomed Attorney Daniel Krisch as a member of the committee.

I. OLD BUSINESS

A. Approval of minutes.

The committee unanimously approved the minutes of October 2, 2017 meeting.

B. Proposal to add a new rule addressing whether the filing of a writ of error operates to stay proceedings to enforce or carry out the judgment.

The proposal was amended to renumber the proposed new rule as Section 72-3a. Attorneys Babbin, Calibey, and Dauster suggested revisions to the proposal for clarity and internal consistency. Specifically, in the first sentence of the second paragraph, "of a writ of error" was added following "existence." In the second sentence, "or Section 61-12" was added following "Section 61-11 (d) and (e)," and, as a result, what had been the final paragraph of the proposal regarding motions to request a stay was deleted. In addition, "or imposing a stay" was deleted from the final sentence of the second paragraph. The committee also discussed the third paragraph pertaining to family matters and determined that it was necessary in order to address the rights of the nonparty in the context of the writ of error.

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

C. Proposal to amend § 71-4 (b) to clarify what constitutes an "official opinion" of the court and amended proposal to make technical changes to § 71-4 (a).

Attorney Levine circulated and discussed the amended proposal, which reflects the current process by which the office of the Reporter of Judicial Decisions provides a link to an electronic copy of the opinion and sends a copy of the rescript to the clerk of the trial court, and also makes the rescript available to the appellate clerk's office.

Attorney Levine moved to adopt both proposals. Attorney DeMeo seconded. The motion passed unanimously.

II. NEW BUSINESS

A. Proposal to amend § 61-7 (a) (3) to require that a joint appeal consent form be filed on the same business day that the appeal is filed.

Attorney Ziogas explained that the current rule made it difficult for the clerk's office to designate parties as appellees or appellants until the expiration of the ten day period. Attorneys Babbitt and Ray discussed the potential difficulty for practitioners that could arise by requiring this form to be filed on the same business day that the appeal is filed, especially as to whether the form could be timely filed if the appeal itself were filed at the eleventh hour. Attorney Calibey queried whether the appeal of the joint appellants could be subject to a motion to dismiss as untimely if the form were filed the next day. Attorney Porter noted a party could always file a motion for permission to file a late joint appeal. Judge DiPentima mentioned that this rule change was necessary for the orderly operation of the clerk's office.

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

B. Proposal to amend §§ 71-5 and 84-4 to clarify that no fee is required if no fee was required to file the initial appeal.

After discussion, Attorney Horton moved to adopt the proposal, and Attorney Porter seconded. The motion passed unanimously.

C. Proposal to amend §§ 73-4 (briefing rules in reservations cases) and 82-6 (briefing rules in certified question cases) to make them consistent.

Attorney Begemann circulated an amended proposal concerning § 82-6, which made it consistent with the proposed changes to § 73-4. Attorney DeMeo raised a concern with the use of the word "simultaneous" in both sections, as although it was generally understood the parties were not required to coordinate and file their briefs and appendices on the same day and that "simultaneous" was being used to mean "not sequential," there was a potential for confusion. "All" was suggested and accepted as a replacement.

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

D. Proposal to amend § 63-4 (a) (6) to clarify what the appellant is required to file in matters in which documents are under seal.

Attorney Ziogas explained the proposal. The committee discussed Attorney Weisfeld's concern with respect to certain orders in criminal cases that are not necessarily reflected in the court's docket, but rather, are detailed in the transcript.

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

E. Proposal to amend § 66-5 to clarify that when the court sua sponte extends the deadline to file a brief, the deadline for filing a motion for rectification or articulation is likewise extended.

Attorney Horton explained this proposal. After a discussion, the final sentence of the proposed commentary was deleted.

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

F. Proposal to amend § 66-6 to require that the trial court's denial of certification to appeal in a habeas corpus case be subject to a motion for review rather than an appeal.

Attorney Horton explained this proposal. He suggested that the motion for review was the appropriate procedural vehicle to allow a panel of the Appellate Court to determine whether the habeas court abused its discretion in denying the petition for certification and to determine whether the habeas appeal should proceed.

Committee members noted that, as a practical matter, other than the standard of review pursuant to *Simms*, counsel briefed the issues in habeas cases in the same manner, regardless of whether the habeas court granted or denied the petition for certification to appeal. It was also noted that, in the event the habeas court did abuse its discretion in denying the petition for certification, this proposal would add significant time to the appellate process for an incarcerated individual.

Attorney Weisfeld briefly outlined other practical and legal concerns with the proposal, including the page limits on motions as compared to briefs, the necessity of obtaining transcripts of the habeas proceeding in order to properly set forth the claims on appeal, and whether habeas trial counsel could file the motion when not all such counsel do appellate work.

Attorney Weisfeld offered to set forth her concerns with the proposal in detail in a memo to the committee. Thereafter, Justice Palmer suggested that the appellate rules work group could look into the matter further.

The matter was tabled for further discussion at a future meeting.

G. Whether the rules should be amended to require hyperlinks to cases in appellate briefs.

The committee considered a memo proposing that the rules be amended to require hyperlinks to Google Scholar for cases cited in appellate briefs. Attorneys Begemann and Goshdigian set forth some concerns that were noted by the members of the appellate rules work group. Because Google Scholar is paginated according to the regional reporter, the proposal would require a change to the citation format in briefs to

provide pinpoint citations to the regional reporter. It was unclear whether Google Scholar picked up replacement pages, and it was noted that hyperlinks currently lead only to the first page of an opinion. Moreover, it was easy to imagine that links to inappropriate content could be embedded in briefs. It was noted that, currently, there was no such requirement in federal appellate practice. The committee also discussed whether hyperlinks should be permitted, rather than required, as the requirement might prove unfair to self-represented parties, and whether a certification requirement attesting that the hyperlinks were accurate and current would be necessary.

Justice Palmer suggested tabling the proposal for a year to see whether emerging technology would make the proposal feasible in the future. Ideally, hyperlinks for Connecticut cases could go to the judicial branch website so as to provide an accurate, up-to-date version of the opinion that is accessible to all.

III. OTHER BUSINESS

No other business was raised.

IV. NEXT MEETING

The date of the next meeting was left to the discretion of the chairs. It is expected that the next meeting will occur in early September, 2018.

Closing matters:

The chairs recognized the contributions of the members of the appellate rules work group and thanked them for their continued hard work.

Respectfully submitted,

Colleen Barnett