

**Advisory Committee on Appellate Rules
April 30, 2014**

The meeting was called to order by Justice Richard Palmer at 2 p.m. in the Attorney Conference Room of the Supreme Court. The following members attended:

Justice Richard N. Palmer, Co-Chair
Chief Judge Alexandra D. DiPentima, Co-Chair
Judge Sheila Huddleston
Attorney Michele Angers
Attorney Kathryn Calibey
Attorney Gregory D'Auria
Attorney John DeMeo
Attorney Wesley Horton
Attorney Pamela Meotti
Attorney Jamie Porter
Attorney Charles Ray
Attorney Thomas Smith
Attorney Giovanna Weller
Attorney Martin Zeldis

Also in attendance were:
Justice Peter T. Zarella
Attorney Colleen Barnett
Attorney Jill Begemann
Joseph Gilgallon

I. Old Business

A. Approval of Minutes of December 19, 2013 Meeting

The committee unanimously approved the minutes of the December 19, 2013 meeting.

B. Proposed Amendment of § 67-2 to Require Electronic Submission of Briefs and Appendices by Counsel in Both Supreme Court and Appellate Court Cases

Justice Zarella explained that a mechanism for electronically submitting briefs and appendices in the Supreme Court and Appellate Court had been developed in advance of the appellate e-filing system, which has been delayed. Joe Gilgallon demonstrated the electronic process for uploading briefs and appendices. He explained that when a brief and/or appendix is submitted electronically, the filer will be able to print a confirmation of filing and will also receive an e-mail confirmation. The website instructions will recommend that parties file "searchable" PDF documents. Eventually, that recommendation may become a requirement.

Briefs and appendices will not be available on the judicial branch website until appellate e-filing is implemented. Until that time, Attorney Dan Klau will continue to post Supreme Court briefs on the Connecticut Bar Association website <http://blog.ctbriefsonline.com>.

Justice Zarella explained that he met with members of the Appellate Advocacy Section of the Connecticut Bar Association after the December 19, 2013 meeting to discuss proposed changes to § 67-2, and modified the proposed rule to address their concerns. For instance, the proposed rule now provides that appendices may be copied on both sides of the page.

Attorney Horton agreed with the proposed language. He noted that although the language did not incorporate a suggestion by some attorneys to set one due date for the electronic filing and a subsequent due date for filing the paper copies, separate requirements would be confusing.

Judge DiPentima indicated that the Appellate Court judges are also in agreement with the proposed rule.

Attorney Angers sought to modify proposed subsection (h) to require that all copies of the brief, rather than just the original, must be accompanied by a certification as set forth in subsection (h). Judge Huddleston noted that the modification would ensure that the original and all copies of the brief would be identical.

Attorney Meotti noted that the suggested wording of the modification would also require parties to file a copy of the electronic confirmation receipt with all copies of the brief and wondered whether that was intended. According to Attorney Horton, such a requirement would present a timing problem for attorneys because they would not receive the electronic confirmation receipt until after they had prepared and printed their briefs. Various committee members proposed language changes to avoid that problem.

Attorneys Weller and D'Auria clarified that the proposal would be modified so that the electronic confirmation receipt would be submitted with the original brief only, and would not be attached to all copies of the brief. On the other hand, the certifications would be included with the original and all copies of the brief.

After discussion, the committee agreed to the following language:

(h) If the appeal is in the supreme court, the original and fifteen legible photocopies of each brief and appendix, if any, shall be filed with the appellate clerk. If the appeal is in the appellate court, the original and ten legible photocopies of each brief and appendix, if any, shall be filed with the appellate clerk.

(i) The original and all copies of the brief filed with the supreme court or the appellate court must be accompanied by: (1) certification that a copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; (2) certification that the brief and appendix being filed with the appellate clerk are true copies of the

brief and appendix that were submitted electronically pursuant to subsection (g) of this section; (3) certification that the brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and (4) certification that the brief complies with all provisions of this rule.

(j) A copy of the electronic confirmation receipt indicating that the brief and appendix were submitted electronically in compliance with subsection (g) of this section shall be filed with the original brief.

(k) Any request for deviation from the above requirements shall be addressed in writing to the appellate clerk.

Attorney Ray moved that the committee adopt the proposal as modified, seconded by Attorney Horton, and the proposal was adopted unanimously.

C. Discussion Concerning the Preparation of Part One of the Appendix

Justice Palmer noted that Attorney D'Auria was interested in discussing committee members' experiences with the preparation of part one of the appendix following the recent revisions to the appellate rules. He had heard from some attorneys that self-represented parties were not preparing part one of the appendix.

Justice Zarella explained that if the appellant does not prepare part one of the appendix, the appellee has the ability to provide the missing materials. Attorney D'Auria noted that it is burdensome for the appellee to provide materials that have been left out.

Justice Zarella then clarified that the intention underlying § 67-8 was that materials necessary for the resolution of the appeal would be contained in part one of the appellant's appendix—the question is how to achieve this result. There are two issues to be addressed: (1) the wholesale failure to prepare part one of the appendix; and (2) the inadequate preparation of part one of the appendix. Justice Zarella noted that § 67-8 (c) was not intended to supplement the complete failure to produce part one of the appendix. Attorney D'Auria emphasized that when the appellant fails to prepare part one, the burden unfairly shifts to the appellee.

Section 67-8 (c) provides that the appellee "shall" include in its appendix any items that are missing from part one of the appellant's appendix. Judge DiPentima opined that she reads the language of § 67-8 (c) as being mandatory. She indicated that both self-represented parties and attorneys are having problems preparing part one of the record.

Attorney Angers clarified that the clerk's office does not accept briefs when there is a wholesale failure to prepare part one of the record. Attorney Meotti opined that because a brief cannot be filed unless it contains part one of the appendix, the practical effect of § 67-8 (c) is to require the appellee to supplement part one of the appendix and not to prepare it in its entirety. Attorney Calibey noted that there may be cases in

which the appellant has done such a poor job of preparing the part one of the appendix that the burden shifts to the appellee. According to Attorney Angers, when that happens, the clerk's office calls attorneys or self-represented parties with respect to supplementing part one of the appendix.

Justice Zarella commented that when an attorney believes that an appellant's appendix is missing an essential document, the attorney would include the document in their appendix anyway. Justice Palmer suggested that if the appellant does a grossly deficient job of preparing part one of the appendix, perhaps the clerk's office should be able to return the brief and appendix.

Justice Zarella indicated that most self-represented parties are trying to comply with the rules. If the rule is not working properly, it can be amended, but we need additional time to train attorneys and self-represented parties about the new requirements. Attorney D'Auria clarified that he is not seeking to change the rule at this point, but to clarify the appellee's obligation. Judge DiPentima emphasized that the Appellate Court needs to receive the docket sheets and the docketing statement, but indicated that it is too early to determine whether attorneys and self-represented parties are including these and other essential documents in part one of the appendix.

The clerk's office has drafted guidelines on how to prepare part one of the appendix. Attorney Angers distributed the guidelines and explained that they will be included in the revised Handbook of Connecticut Appellate Procedure and will be available on the website.

Committee members agreed with Justice Palmer's suggestion to place further discussion of this matter on the agenda for the next meeting.

D. Proposed Amendment of Civil Appellate Fee Waiver Rule, § 63-6, to Comport with General Statutes § 52-259b (c)

Attorney Porter noted that the committee had discussed amendments to § 63-6 during the December 19, 2013 meeting and had raised several concerns. With respect to the concern that the rule should include a time frame, Attorney Porter distributed proposed language that would require an applicant whose fee waiver application has been denied to request a hearing within ten days of issuance of notice of the denial of the application. The proposed language would also require the court clerk to assign a hearing within twenty days of the hearing request.

Attorney Porter also noted that because § 66-6 permits a party to file a motion for review with respect to a trial court's order concerning the waiver of fees, costs and security, she would suggest eliminating the last sentence of the language that had been distributed prior to the meeting. That sentence, which provided that "[a]n order denying . . . an application for waiver of fees . . . shall not be subject to review except following a hearing and further decision on the application" was not in keeping with the broad language of § 66-6.

Although Attorney Horton was concerned that the procedure of not permitting a hearing until after the denial of the application could be problematic, Judge DiPentima disagreed, noting that the purpose of the hearing is to permit the applicant to provide more information that might persuade the judge to change his or her mind. In response to a question by Justice Palmer, Attorney Porter noted that most fee waiver applications are granted. Attorney Porter and Attorney DeMeo emphasized that General Statutes § 52-259b (c) specifies that the hearing follows the denial of the application and that the primary purpose for amending § 63-6 was to be consistent with the statute. Attorney DeMeo also mentioned that Judge Prescott, who was not present for the meeting, had raised additional concerns, including the larger issue of whether rules and statutes should be consistent.

Attorney Ray suggested changing the proposed language to provide: "The court may not consider the relative merits of a proposed appeal in acting upon an application pursuant to this section, except the court may consider the criteria contained in General Statutes § 52-259b." Judge Huddleston also suggested eliminating the phrase "counsel for" from the fourth paragraph of the proposed language.

Attorney Horton moved that the committee adopt the proposal as modified, seconded by Attorney Ray, and the proposal was adopted unanimously.

E. Further Discussion—Whether Rules Should be Amended to Bar Hybrid Representation in Civil Appeals

Judge DiPentima explained that the Appellate Court has encountered cases in which a self-represented party and an attorney have conflicting views as to how a case should be handled. Attorney Porter noted that this conflict had occurred in thirteen Appellate Court cases during the past year. As an example of this type of conflict, she noted that in one case an attorney filed an appeal for a self-represented party and the self-represented party filed sixty-six motions on his own. Judge DiPentima noted that in one hybrid representation case, an attorney filed a motion for a continuance and his client/self-represented party objected.

Judge DiPentima recommended further assessment of the effects of changing the rule concerning hybrid representation in civil appeals. For instance, would prohibiting hybrid representation in civil cases lead more parties to represent themselves? Judge DiPentima noted that some sort of change to the rule, similar to the rule pertaining to criminal and habeas cases, is necessary. Judge Huddleston suggested that changes to the rule should be considered in conjunction with the judicial branch's pilot program concerning limited scope representation.

Justice Palmer recommended placing the matter on the agenda for consideration at the next committee meeting.

II. New Business

A. Proposed Amendment of § 62-7

Section 62-7 currently provides that "[a]ny papers correcting a noncomplying filing shall be deemed to be timely filed if resubmitted to the appellate clerk without delay."

Attorney Angers recommended replacing the phrase "without delay" with a specific time limit because self-represented parties and attorneys often fail to return papers in a timely fashion. Attorney Calibey suggested a ten-day time frame and wondered whether a party could file a motion to extend the time period if necessary. Attorney Angers replied that such a motion would be appropriate. She also explained that all counsel of record are notified when the clerk's office returns papers for noncompliance.

In response to Attorney Weller's concern that a ten-day time limitation might not be sufficient, Justice Palmer suggested a fifteen-day time period, and committee members agreed.

Attorney Calibey moved that the committee adopt the proposal as modified, seconded by Attorney Horton, and the proposal was adopted unanimously.

B. Discussion—Update to “Handbook of Connecticut Appellate Procedure”

Attorney DeMeo explained that Judge Beach had formed a committee to update the "Handbook of Connecticut Appellate Procedure." The updated publication will be published on the judicial branch website only at this point because e-filing will necessitate further changes.

Judge DiPentima recognized that the handbook is very helpful to attorneys. Attorney Weller agreed, noting that her firm provides the publication to new associates.

C. Letter from Attorney Robert E. Byron

Justice Palmer explained that Attorney Byron had submitted a letter to change the time frame for filing briefs. Judge DiPentima indicated that she was reluctant to discuss the issue when Attorney Marks was not present because certain statements in the letter could be of significance to the state. Judge DiPentima also noted that the letter raised a second concern that was beyond the scope of the committee's authority.

On Justice Palmer's suggestion, committee members agreed that no action was necessary.

III. Other Business

There were no additional matters for the committee's consideration.

IV. Next Meeting

The date for the next meeting was left to the discretion of the committee chairpersons.