

Meeting of the Advisory Committee on Appellate Rules
Thursday, May 21, 2020

The meeting was called to order by Justice Palmer at 10 a.m. in over videoconference.

Members in attendance:

Justice Richard N. Palmer, Co-Chair	
Chief Judge Alexandra D. DiPentima, Co-Chair	
Attorney Jeffrey Babbin	Attorney Eric Levine
Attorney Colleen Barnett	Attorney Bruce Lockwood
Attorney Jill Begemann	Attorney Jamie Porter
Attorney Kathryn Calibey	Attorney Charles Ray
Attorney John DeMeo	Attorney Lauren Weisfeld
Attorney Richard Emanuel	Attorney Giovanna Weller
Attorney Paul Hartan	Attorney Carolyn Ziogas
Attorney Wesley Horton	
Attorney Daniel J. Krisch	Additional attendees:
Hon. Sheila Huddleston	Hon. Christine Keller
Attorney Clare Kindall	

Preliminary matters:

This marked the first meeting of the advisory committee that was conducted over videoconference. An audio recording of the meeting would be posted to the judicial branch website and attendees were asked to identify themselves before speaking.

I. OLD BUSINESS

A. Approval of minutes of the October 29, 2019 meeting

Attorney Horton moved to approve the minutes. Attorney Porter seconded. The minutes were approved unanimously.

Addendum. The minutes from the October 29, 2019 meeting indicated that these minutes would reflect the final result of agenda item II B concerning the inclusion of information about protective orders in the docketing statement. A proposal was circulated and approved. The Courts adopted an amendment to § 63-4 on an interim basis, effective upon publication in the February 11, 2020 Connecticut Law Journal.

B. Whether to amend § 66-1 concerning extensions of time so that it is consistent with § 61-14.

(N.B. This item was considered following consideration of item II A of the agenda.) At the last meeting, it was suggested that § 61-14 motions for extensions of time to file a motion for review of orders concerning stays of execution be filed in the Appellate Court. The matter was referred to the work group. Attorney Ziogas explained that the suggestion was unworkable for several reasons. Attorney Horton withdrew his objection to the prior proposal.

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

II. NEW BUSINESS

A. Whether to amend the child protection rules in light of *In re Taijha H.-B*, 333 Conn. 297 (2019).

Judge Keller explained that our Supreme Court determined that it was constitutionally necessary to have additional procedural safeguards for determining whether an indigent parent will be assigned counsel to appeal from a judgment terminating his or her parental rights. Judge Keller indicated that this proposal was drafted by a committee that also included Judge Bernadette Conway, Judge Nina Elgo, Justice Raheem Mullins, and Chief Judge DiPentima. Drafts were reviewed by the work group for this committee, with contributions from Attorney Porter, and by the offices of the Attorney General and the Public Defender.

In response to a question regarding the necessity of departing from the *Anders* procedure used in criminal cases, Judge Keller explained that this proposal balances the child's need for permanency (and the attendant time constraints under the relevant federal and state legislation) against the parent's rights. The proposal provides for: the appointment of appellate review counsel for the limited purpose of conducting an initial review for nonfrivolous appellate issues; notice and an opportunity for the parent to respond; judicial review if counsel determines that no nonfrivolous issue exists; and a limited extension of the appeal period to accomplish these ends.

Attorney Weller noted that an amendment to Section 3-8 (b) of the Superior Court rules may be necessary to address the "limited in addition to" appearance contemplated by the rule changes here. Judge Keller indicated that she would submit a proposal to the Superior Court.

Attorney Kindall suggested that § 35a-21 be revised to conform to the more clear language in § 79a-2 (a). Judge Keller indicated that revision would be incorporated into the proposal sent to the Superior Court. The proposal before this committee was amended to add Attorney Kindall's suggestion to add "e-mail address" to 79a-3 (b).

Following a discussion, Attorney Levine indicated that the Office of the Reporter of Judicial Decisions would review the proposal for stylistic changes prior to the vote by the Courts and that an amended draft would be circulated to the committee if a change was contemplated beyond conforming to style.

Attorney Horton moved to adopt the proposal, as amended. Attorney Porter seconded. All approved except Attorney Krisch. The motion passed.

B. Whether to amend §§ 63-4, 63-8, 66-6 and 77-1 regarding the procedure for ordering transcripts.

Superior Court operations is moving to a system for ordering transcripts electronically and is eliminating form JD-ES-038. The proposal sought to conform the appellate rules to the new process. Several concerns were voiced by members of the committee surrounding the "acknowledgement" from the court reporter due within ten days of filing the appeal under § 63-4 (a) (2). The term "acknowledgement" from the court reporter had taken on a particular meaning: it was understood by counsel to be a detailed statement from the court reporter indicating the estimated number of pages and estimated date of delivery, and not merely "receipt" or "confirmation" that a transcript order had been

submitted, which is all that part 1 of form JD-ES-038 required. In the first sentence of (a) (2), Attorney Calibey moved to replace "a transcript order acknowledgement from the official court reporter pursuant to" with "a copy of the electronic transcript order made in compliance with." Conforming changes were proposed to §§ 63-4 (a) (2), 66-6 and 77-1.

However, because details of the new ordering process were not known at this time, Attorney Calibey's motion to adopt the proposal, as amended, was withdrawn. Attorney Hartan will follow up with Court Operations to get more specifics as to how the process will work, and will follow up with the committee with an amended proposal.

C. Whether to amend § 61-16 to allow an appearing party the opportunity to respond to the filing of a bankruptcy notice.

Attorney Begemann explained that the subsections addressed, sequentially, filing a notice concerning a bankruptcy stay, notice of relief from any stay, and final resolution of the bankruptcy case. Attorney Ray expressed concern with the phrase "including any supporting documentation," which is not used elsewhere in the rules. Attorney Horton suggested following that phrase in subsections (a) and (c) with "from the Bankruptcy Court file." The committee discussed whether memoranda of law and argument concerning the applicability of the bankruptcy stay would be required. Attorney Krisch suggested deleting "indicating the reasons why the automatic stay does not apply" from the end of subsection (a). The court could always order the parties to file legal memoranda when needed.

Attorney Krisch moved to adopt the proposal, as amended. Attorney Horton seconded. The motion passed unanimously among those present. Attorney Kindall indicated that she had experienced technical difficulty and missed the voice vote but was present for the discussion. She voted to adopt the proposal as amended.

D. Whether to amend § 86-1 concerning publication and effective date of the rules.

Attorney Levine explained the proposal to amend the rule to more closely align with the Superior Court's rule § 1-9 concerning notice and opportunity for public comment prior to the Supreme and Appellate Court judges adopting a new rule or amending an existing rule. Attorney Horton moved to adopt the proposal. Attorney Levine seconded. The motion passed unanimously.

E. Whether to amend § 62-7 to clarify that subsequent returns for the same filing will not initiate a new fifteen day refiling period.

Committee members agreed that the proposal was a good idea, as several had experienced an opposing party filing a noncomplying document and waiting 15 days before filing another noncomplying document, and repeating. Also discussed was the fact that the time to file a response would not begin until a complying document was filed, if any. Under the rule, after the first 15 day refiling period, any subsequent filing—compliant or not—would be untimely. However, there was disagreement as to whether that was clear in the rule as drafted, and whether the rule should refer to or incorporate the language in § 66-3 concerning "good cause for late filing." The proposal was tabled for consideration by the work group.

F. Whether to amend § 61-14 to codify the holding in *Wachovia Mortgage FSB v. Toczek*, 189 Conn. App. 812, 820, cert. denied, 333 Conn. 914 (2019).

Attorney DeMeo presented the proposal. Several alternative proposals were discussed, some of which were inconsistent with the holding of *Toczek*. Following discussion, the committee decided to table the proposal for further consideration by the work group.

G. Whether to amend § 67-8 to require that the cover page and the certification page be included with any transcripts included in the appendix.

Attorney Begemann explained the proposal. There were no objections to the amendments to subsections (b) (2) and (c) concerning the cover page and certification page. Attorney Ziogas explained that the proposal to add "including the complaint" following "all relevant pleadings" in subsection (b) (1) arose out of the fact that failure to include the complaint was a recurrent problem encountered by the appellate clerk's office in its review of appendices. Attorney Calibey moved to amend the proposal to state: "including the operative complaint and any other complaint at issue."

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

Attorney Kindall proposed a possible future discussion item concerning the usefulness of appendices to the courts generally, and perhaps some further standardization concerning pagination.

H. For discussion—whether to change the 11:30 a.m. time for release of advance opinions.

Attorney Krisch had asked whether there was a reason why opinions released in the ordinary course could not be posted to the judicial branch website earlier in the day, preferably first thing in the morning. Other members of the committee agreed it would be helpful to the bar. Attorney Levine explained it had been a long-standing practice that evolved as a courtesy to the trial court judges, who would receive the opinion several hours before it was released on the website and therefore had time to review it ahead of the media and the parties. He also explained that he would have to discuss the possibility of any change with COLP. The process for releasing slip opinions was also discussed, as well as the Supreme Court's more recent practice of issuing its decisions as slip opinions with publication in the Law Journal forthcoming at a later date.

These discussion items concerned matters of court policy and Justice Palmer indicated that he would bring the committee's questions and concerns to the Justices.

III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE

Time did not permit further business.

Concluding matters:

Justice Palmer and Chief Judge DiPentima each stated that this would be their final meeting serving as co-chairs of the committee. They each thanked the committee members, some of whom had been serving for many years, for their hard work and dedication. The meeting was adjourned at 12:50.

Respectfully submitted,

Colleen Barnett