

ADVISORY COMMITTEE ON APPELLATE RULES
MAY 30, 2012

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

Justice Christine Vertefeuille, Co-Chair
Chief Judge Alexandra DiPentima, Co-Chair
Attorney Gregory D'Auria
Attorney John DeMeo
Attorney Wesley Horton
Attorney Sheila Huddleston
Attorney Susan Marks
Attorney Pamela Meotti
Attorney Thomas Smith
Attorney Martin Zeldis

Also in attendance were:

Attorney Jill Begemann
Attorney Deborah DelPrete Sullivan
Attorney Paul Hartan
Attorney Lori Petruzzelli
Attorney Susan Storey

I. OLD BUSINESS

A. Minutes of February 22, 2012 Meeting

Justice Vertefeuille asked if there were any corrections or changes, and hearing none, Attorney D'Auria moved to approve the minutes as distributed. Attorney Huddleston seconded the motion and it was approved unanimously.

B. Further Consideration of Proposed Amendment of § 61-9 (governing amended appeals)

Attorney Hartan, who attended the meeting in place of Attorney Angers, questioned why the proposed amendment would require a party filing an amended appeal to file either a certificate stating that there are no changes to the § 63-4 papers or any amendments to those papers. He wondered whether there would ever be a time when there would be no amendments to the § 63-4 papers.

Attorney Horton suggested eliminating the reference to the certificate and requiring the appellant to file "any appropriate amendment to the § 63-4 papers."

In response to a question by Attorney DeMeo as to the intent behind the proposed

amendment, Attorney Hartan clarified that when an amended appeal is filed with no supporting papers, the clerk's office cannot issue an order to obtain those papers. If a party files numerous amended appeals, it becomes difficult to sever the appeals when there is no supporting paperwork associated with each appeal and no ability to order a party to file such papers.

Judge DiPentima noted that the proposed amendment, as originally drafted, would address the few cases in which a party files an amended appeal with no amendments to the § 63-4 papers by authorizing the clerk's office to order the party to specify that the original § 63-4 papers apply or to file amendments.

Attorney Horton moved that the committee adopt the proposed amendment to § 61-9 as originally drafted. Attorney Smith seconded the motion and it passed unanimously.

C. Further Consideration of Proposed Amendment of § 81-2 (governing form of petition for certification to appeal zoning and wetlands decisions)

Judge DiPentima clarified that the purpose of this amendment is to provide the Appellate Court with additional information that is necessary when considering petitions for certification to appeal. To that end, the filing party must provide in its appendix the operative complaint and briefs filed by all parties.

Attorney Huddleston suggested deleting the word "and" from the proposed language so that it provides: "An appendix containing the operative complaint, all briefs filed by all parties, the opinion or order"

Attorney Petruzzelli suggested revising the commentary as follows: "The amendment to subdivision (5) of subsection (a), which addressed the contents of the appendix, is intended to facilitate review by the appellate court in its consideration of petitions for certification."

Attorney Horton moved that the committee adopt the Appellate Court rule proposal and commentary as modified. Attorney Marks seconded the motion and it passed unanimously.

D. Further Consideration of Proposed Amendment to § 62-9A ("Hybrid Representation; Removal or Substitution of Counsel in Criminal and Habeas Corpus Appeals")

Justice Vertefeuille distributed two letters that had been submitted to the committee by Leo C. Arnone, Commissioner of the Department of Correction, and Kevin T. Kane, Chief State's Attorney.

Attorney Zeldis, who was accompanied by Attorney Storey, Chief Public Defender, and Attorney DelPrete Sullivan, legal counsel for the Office of the Chief Public Defender, indicated that issues concerning the appointment of standby appellate counsel most often arise when appointed counsel files a brief and the defendant takes issue with the

brief. At that point, the defendant may seek replacement counsel or removal of appointed counsel, and it is not clear whether the rules of practice permit the trial court to appoint standby appellate counsel. Although § 62-9A does not refer specifically to the appointment of standby appellate counsel, it does refer to chapter 44 of the rules, and § 44-5 does permit the appointment of standby counsel at trial. Attorney Zeldis suggested that the provisions, read together, reasonably could be interpreted to allow the appointment of standby counsel on appeal, and the amendment is intended to clarify that confusion.

Attorney Zeldis discussed the Supreme Court's decision in *State v. Fernandez*, 254 Conn. 637, 653, 758 A.2d 842 (2000), which explained that the constitutional right to access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries *or* adequate assistance from persons trained in the law. In *Fernandez*, the Supreme Court issued the bright line rule that a defendant who knowingly and intelligently waives his right to counsel and who has been appointed standby counsel at trial is not constitutionally entitled to access to a law library. Rather, the appointment of standby counsel at trial satisfies the state's obligation to provide the defendant with access to the courts. *Id.*, 658.

Attorneys Zeldis and Storey indicated that *Fernandez* gives rise to a number of issues, including the obligation of the Department of Correction to provide law libraries and the role of standby counsel at trial as opposed to on appeal. Is standby counsel someone who is present in court to answer questions, or is standby counsel a research assistant or a typist when an incarcerated defendant has no access to a computer or typewriter?

Attorney D'Auria pointed out that there are three main questions: 1) does the right to access to the courts include the right to standby counsel on appeal; 2) if yes, what does that right entail; and 3) if not, then what, if anything, is required? Justice Vertefeuille noted that these are substantive legal issues, rather than procedural issues, that go beyond the scope of the advisory committee on appellate rules—such issues should be presented to and ruled on by the courts.

Attorney Zeldis moved for adoption of the amendment as proposed, but the motion failed for lack of a second.

E. Proposed Revisions to Rules of Appellate Procedure Governing Preparation and Filing of the Record.

These proposed revisions were not ready and the matter was marked over for consideration at the next meeting.

II. NEW BUSINESS

A. Letter from Attorney Mark Diamond concerning Form of Petition for Certification by the Supreme Court (see § 84-5)

Attorney Huddleston explained that the federal courts do not require a particular font, but do require litigants to use 14 point type and a word count instead of a page count. The word count component of the rule deals with the issue of litigants including extensive footnotes in their brief. The 14 point type makes the briefs easier to read but uses more paper. In addition, because the federal system requires litigants to certify the word count, it requires computer sophistication. If the Supreme and Appellate Courts are not facing many abuses of the footnote rule, it would be possible to make briefs easier to read by changing the type size and increasing the page limit. Judge DiPentima indicated that it would be advisable to canvass judges before changing the rule, and the proposal was marked over for consideration at the next meeting.

B. Proposed Amendment of § 63-8 (a) (governing ordering and filing of transcripts)

Attorney Huddleston suggested amending § 63-8 (a), under which an appellee has twenty days from the filing of the appeal to order additional transcripts, to be consistent with § 63-4 (a), under which an appellee has twenty days from the filing of the appellant's transcript papers to order additional transcripts.

Attorney Horton noticed that the first line of § 63-8 (a) also should be changed to provide, "On or before the date of the filing of the § 63-4 papers"

Attorney Horton moved that the committee adopt the proposed rule as modified. Attorney Huddleston seconded the motion and the motion passed unanimously.

C. Such Other Matters as may come before the Committee

There were no additional matters for consideration by the committee.

III. Next Meeting

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