

Advisory Committee on Appellate Rules
June 18, 2015

The meeting was called to order by Justice Palmer and Judge DiPentima 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
Judge Sheila Huddleston
Attorney Jeffrey Babbin
Attorney Kathryn Calibey
Attorney Michael Besso (in place of Attorney Gregory D'Auria)
Attorney John DeMeo
Attorney Richard Emanuel
Attorney Paul Hartan
Attorney Wesley Horton
Attorney Susan Marks
Attorney Pamela Meotti
Attorney Jamie Porter
Attorney Charles Ray
Attorney Thomas Smith
Attorney Lauren Weisfeld

Members not in Attendance:

Attorney Giovanna Weller

Additional Attendees:

Justice Peter T. Zarella
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Jessie Opinion

I. Old Business

A. Approval of Minutes of November 25, 2014 minutes

The committee unanimously approved the minutes of the November 25, 2014 meeting.

B. Further Discussion—Preparation of part one of the appendix under Practice Book § 67-8

Judge DiPentima indicated that from the Appellate Court's perspective, there has been improvement in the preparation of part one of the appendix. Some self-represented parties could benefit from additional guidance from the clerk's office with respect to the

contents of part one. Overall, however, the parties are doing a better job of preparing appendices. Committee members agreed that this matter does not require further discussion.

C. Further Discussion—Redaction of personal identifying information when crucial to legal argument

As Justice Palmer noted, there is no clear solution or recommendation with respect to this issue at present. The committee will continue to monitor the issue but there is no need for further discussion at this point.

D. Further Discussion—Whether Practice Book § 67-2 (i) should be amended to permit electronic delivery of the brief and appendix to the trial judge

Committee members agreed that Practice Book § 67-2 should be amended to permit electronic delivery of the brief and appendix to the trial judge and committee staff will draft language to permit electronic delivery. Justice Zarella explained that because briefs are filed electronically and available to the public on the Judicial Branch Website, the rule should simply notify judges that the briefs are available online. Attorney Besso pointed out that briefs in juvenile matters are not available to the public. Accordingly, the amended language will account for that exception and any others that apply.

II. New Business

A. Proposed changes to rules of appellate procedure to permit e-filing

Justice Palmer and Judge DiPentima clarified that the proposal was before the committee for discussion rather than action, which would take place during a subsequent meeting in July. Justice Zarella noted that the proposed amendments were not intended to make substantive changes to the rules, but to permit electronic filing.

Attorney Calibey mentioned that amendments to Practice Book § 62-6 would, in essence, require attorneys to fulfill two certification requirements. The first certification would appear on the uploaded document and the second would take place upon completion of the e-filing transaction. Justice Zarella explained that because self-represented parties will not be e-filing documents initially, it is necessary to retain the certification requirement on the uploaded document at this point.

Attorney Calibey also pointed out that an attorney may use a firm juris number to sign in to e-services, but must provide his or her individual juris number as a signature in order to file the appeal. Attorney Hartan clarified that a firm's appearance in the trial court will continue to carry over to appellate proceedings and that the entry of an individual juris number as a signature during the e-filing transaction will not constitute an in lieu of appearance. The clerk's office will enter both the firm juris number and the individual juris number into its database as having appearances.

After committee members agreed with Justice Palmer's suggestion to circulate any nonsubstantive suggestions via group e-mail, Attorney Babbin raised several substantive issues. First, with respect to Practice Book § 63-1 (b), committee members agreed with his suggestion to retain the language "the verdict is accepted" rather than to amend the language to "when the judgment is entered on the verdict."

With respect to Practice Book § 66-5, Attorney Babbin noted that the trial court's decisions/orders on motions for rectification and articulation often are not docketed by the trial court under current procedures. Committee members agreed that as long as these matters are, in fact, docketed, the rule change would not be problematic. John DeMeo will coordinate with Joseph DelCiampo, Deputy Director of Legal Services, to notify trial judges and clerks' offices about the importance of adding these decisions to the docket. In addition, the rule may be amended to provide: "The clerk of the trial court shall send notice of the decision on the motion to all counsel of record and to the appellate clerk, and shall list the decision on the trial court docket." Finally, Practice Book § 66-5, which says "notice of the decision," should be consistent with Practice Book § 66-7, which says "notice of the order" from the trial court.

The committee briefly discussed the fact that under the proposal, the parties would no longer file a draft judgment file under Practice Book § 63-4, but would instead include a signed judgment file in the appendix to their brief. Judge DiPentima mentioned the need to get the word out to the trial court that when a case is on appeal the judgment file needs to be prepared expeditiously.

Attorney Horton wondered whether the use of the term "request" in Practice Book § 60-4 and throughout the appellate rules could cause confusion because in the trial court, a request is a formal pleading. The term will be retained, but committee staff will revise the wording in Practice Book § 67-3 and in other provisions using similar language to clarify that requests would be made by letter.

Committee members agreed to revise Practice Book § 66-1 (b) as follows: "Motions to extend the time limit for filing any appellate document, other than the appeal, shall be filed with the appellate clerk. The motion shall set forth the reason for the requested extension and shall be accompanied by a certification that complies with Section 62-7. . ."

Because remaining issues were nonsubstantive, committee members agreed to resolve them via group e-mail.

B. Proposed change to Practice Book § 62-9 to require that *Anders* motions and briefs be filed under seal

Attorneys Marks and Weisfeld prepared a memo proposing the following revision to § 62-9 (d): "The brief accompanying the motion, as required under Section 43-35, shall comply with Section 43-35 in form and substance and shall be filed under seal." They also suggested that adding commentary to § 62-9 concerning the procedures for filing

Anders briefs might obviate the need for the proposed addition of § 62-9 (e) and § 23-41 (d). In addition to describing procedures, the commentary could also explain that matters of substance should not be addressed in the motion accompanying the *Anders* brief.

Attorney DeMeo will provide a copy of the memo to members of the Superior Court Rules Committee, which is also considering changes concerning *Anders* matters, and Attorneys Marks and Weisfeld will be available to discuss the issues if necessary. Committee staff will prepare a proposed amendment on the basis of the discussion for action in July.

C. Proposed change to Practice Book § 63-10 to remove language exempting self-represented parties from preargument conferences

John DeMeo explained that Judge Pellegrino, having conducted a successful pilot program to include self-represented parties within the preargument conference program, sought to amend § 63-10 to remove language exempting self-represented parties from the program. Attorney Horton moved that the committee adopt the proposal, seconded by Attorney Ray, and the motion passed unanimously.

D. Proposed changes to Practice Book §§ 60-5 and 61-10 (b) to remove language saying that appellate court may "remand the case" for articulation

As Attorney DeMeo explained, Justice Vertefeuille proposed amending §§ 60-5 and 61-10 (b) to describe the articulation procedure more accurately. Under the amended language, an appellate court "may order a further articulation," rather than "remand the case for a further articulation." Attorney Smith noted that the retained commentary also needs to be updated to reflect the change. Attorney Horton moved that the committee adopt the proposal, seconded by Attorney Ray, and the motion passed unanimously.

III. Other business

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

IV. Next meeting

The next meeting will be scheduled in July for the primary purpose of acting on the rules to permit appellate e-filing.