

**Meeting of the Advisory Committee on Appellate Rules**  
Tuesday, October 27, 2020

Justice D'Auria called the meeting to order at 2 p.m.

**Members in attendance:**

Justice Gregory T. D'Auria, Co-Chair  
Judge Eliot D. Prescott, Co-Chair  
Attorney Jeffrey Babbin  
Attorney Colleen Barnett  
Attorney Jill Begemann  
Attorney Kathryn Calibey  
Attorney Richard Emanuel  
Attorney Paul Hartan  
Attorney Clare Kindall  
Attorney Daniel J. Krisch  
Attorney Eric Levine  
Attorney Bruce Lockwood  
Attorney Jessie Opinion  
Attorney Jamie Porter  
Attorney Charles Ray

Attorney Lauren Weisfeld  
Attorney Giovanna Weller  
Attorney Carolyn Ziogas

**Members not in attendance:**

Attorney Wesley Horton  
Hon. Sheila Huddleston

**Additional Attendees:**

Attorney Ken Bartschi (for Attorney Horton)  
Attorney René Robertson  
Alison Chandler (External Affairs)

*Preliminary matters:*

This meeting was conducted via videoconference on the Microsoft Teams platform and was the first meeting of the Advisory Committee on Appellate Rules to be livestreamed on the Youtube channel for the Judicial Branch.

The co-chairs extended their welcome to Attorney Opinion, who succeeded John DeMeo as the Chief Staff Attorney of the Supreme and Appellate Courts. On the occasion of her final meeting, the co-chairs extended their thanks to Attorney Calibey for her years of service to the committee and wished her well in her upcoming retirement.

It was noted that Attorney Bartschi was attending the meeting in place of Attorney Horton, but was having technical difficulties and would join as soon as possible.

**I. OLD BUSINESS**

**A. Approval of minutes of May 21, 2020.**

Attorney Kindall moved to approve the minutes of the May 21, 2020 meeting. Attorney Krisch seconded. The motion passed unanimously.

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

(Taken out of agenda sequence.) Attorney Robertson presented the changes that had been made to the proposal that had been considered at the May, 21 2020 meeting to retain terms that had acquired a specific meaning under the rules. It was anticipated that the new system for ordering transcripts would be in place by July, 2021, and that these proposed amendments would be effective in conjunction with that change. Attorney Babbin noted that this revised proposal addressed the concerns raised at the last meeting. Attorney Hartan moved to adopt the proposal. Attorney Calibey seconded. The motion passed unanimously. Attorney Robertson departed the meeting.

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

Attorney Barschi joined the meeting. Attorney Ziogas presented this proposal, which had been tabled at the last meeting for further consideration by the work group. Upon further consideration, no changes were made. The proposal as drafted was consistent with and codified the Courts' policy since 2014 that a timely filed document that was returned by the appellate clerk would be deemed timely if corrected within 15 days; a party was not entitled to successive 15 day periods to file a complying document. Judge Prescott moved to adopt the proposal. Attorney Porter seconded. The motion passed unanimously.

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

Attorney Begemann summarized the history of this issue. A proposal was considered at the last meeting to codify the Appellate Court's decision in *Toczek*. That proposal was tabled. Attorney Horton submitted a counterproposal, which would overrule *Toczek*, for consideration at this meeting. Attorney Begemann discussed the concerns that the work group had with the counterproposal. Although the committee members were provided with both the original proposal and the counterproposal, Attorney Begemann indicated that the work group was not inclined to make any changes to § 61-14 at this time.

Attorney Bartschi addressed the concerns raised with the counterproposal and moved for its adoption on behalf of Attorney Horton. Attorney Ray seconded. A voice vote having produced unclear results, Judge Prescott moved for a roll call vote as to the counterproposal. Attorneys Krisch, Ray, Bartschi, Weller, and Levine, were in favor; the remaining members opposed, with Attorney Weisfeld abstaining. The motion failed.

It was agreed that clarity in this area would be helpful. The committee then considered the original proposal, and amendments were suggested by Attorneys Babbin, Porter, and Ziogas. Under the original proposal, as amended, the final sentence of the first paragraph of § 61-14 would read: "If such a timely motion for reconsideration is filed, any stay that was in effect shall continue until its disposition and, if it is granted, until the matter is finally determined." It was noted that the proposed commentary would also have to be adjusted, as the original proposal, as amended, does not precisely codify the holding of *Toczek*. Attorney Babbin moved to adopt the original proposal, as amended. Attorney Porter seconded. The motion passed unanimously.

## **II. NEW BUSINESS**

**E. Whether to amend § 67-2 to reduce the number of paper copies of briefs filed in the Supreme and Appellate Courts.**

Attorney Begemann presented this proposal. It was noted that this was a modest reduction in the number of paper copies, and Attorney Ray expressed that the sooner that this number could be moved to "zero," the better. Attorney Levine inquired as to whether this rule should be amended on an interim basis. It was determined that notice of the reduction could be handled administratively by the clerk's office until the rule was formally adopted, and an interim amendment was not necessary. Attorney Begemann moved to adopt the proposal. Attorney Ray seconded. The motion passed unanimously.

**F. Whether to amend § 84a-2 to clarify whether the superior court rules or the rules of appellate procedure apply to motions filed in original judgment actions.**

Attorney Ziogas explained that the proposal sought to clarify that if there is an appellate rule on point, the appellate rule controls in an original jurisdiction action. This item was tabled

and referred to a subcommittee of Attorneys Ziogas, Krisch, Babbin and Kindall for a revised proposal to be circulated via e-mail.

Addendum: The revised proposal was circulated by e-mail on October 29, 2020. Two instances of "the form of" were deleted from the original proposal, which was otherwise unchanged. The revised proposal was unanimously approved on November 4, 2020.

**G. Whether to amend § 62-8A regarding applications to appear pro hac vice on appeal.**

Attorney Ziogas explained the proposed amendment as well as the new forms developed with Legal Services for pro hac vice applications, which would be used by both the Superior Court and the appellate system. Attorney Babbin moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

**H. Whether to amend § 67-3 regarding the time to file a reply brief when there are multiple appellees.**

Attorney Krisch explained the potential uncertainty in the rule as to when the time for filing a reply briefs runs when more than one appellee is filing a brief. Additional considerations included addressing combined replies and page limitations as well as nonparticipating appellees. The matter was tabled for consideration of a revised proposal at the next meeting.

**I. Discussion—Whether to amend the rules to allow for the electronic filing of briefs.**

Attorney Hartan addressed the optional E-Briefing pilot program that is presently in place. There will be a push to get E-Briefing rules ready for consideration at the spring meeting, with a goal of presenting the rules package to the Courts for votes before next summer. There have been discussions regarding a dual filing transition period. Input from practitioners would be valuable, and it is hoped that draft proposals can be circulated early for feedback. Attorney Kindall proposed some interim steps to consider, including having the filing of the E-Brief control timeliness and not the filing of paper briefs. She also addressed some issues her office has had with the E-Briefing pilot program, including the numbering of paragraphs and hyperlinks to appendix cites, which substantially adds to the work of staff. There was a brief discussion regarding the usefulness of appendices in an E-Briefing environment. Attorney Ziogas invited further feedback from the bar, and noted that, presently, the process of preparing an optional E-brief constitutes "good cause" for an extension of time for filing.

**III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE**

None at this meeting.

**IV. NEXT MEETING**

The next meeting was anticipated to take place in Spring 2021.

The meeting adjourned at 3:45 p.m.

Respectfully submitted,

Colleen Barnett