

ADVISORY COMMITTEE ON APPELLATE RULES

October 28, 2008

The meeting was called to order by Justice Schaller at 2:00 p.m. in the Attorneys Conference Room of the Supreme Court. The following committee members were in attendance:

Justice Barry Schaller, co-chair
Chief Judge Joseph Flynn, co-chair
Attorney Michele Angers
Attorney William Gallagher
Attorney Gail Giesen
Attorney Wesley Horton
Attorney Sheila Huddleston
Attorney Kevin Loftus
Attorney Susan Marks
Hon. Eliot Prescott
Attorney Carolyn Querijero
Attorney Charles Ray
Attorney Holly Sellers
Attorney Giovanna Weller
Attorney Martin Zeldis

Also in attendance were:

Attorney Jill Begemann
Attorney Jeffrey Babbin
Attorney Thomas Donlon
Attorney Dan Klau
Mr. David Smail
Ms. Maureen Well

I. OLD BUSINESS

(a) *Minutes of June 23, 2008 meeting.*

The minutes were approved as distributed.

(e) *Proposals (1) to require electronic briefs in appeals to be argued before the Supreme Court and (2) to encourage the filing of hyperlinked briefs.*

Justice Schaller asked that item I.e. on the agenda be discussed first. Following agreement by the committee, Justice Schaller invited Mr. David Smail, to speak to this item. Mr. Smail distributed an overview of a proposal for submission of

briefs in electronic form (copy attached to minutes). Authentication of users via e-services, technical standards currently in place, and use of .pdf format were reviewed. Attorney Sellers then provided a brief demonstration of aspects of e-services that could be used to develop this new application. Essentially, the new application would utilize existing standards and technology, consistent with the existing Judicial Branch plan for electronic filing and e-services.

Justice Schaller stated that the proposal at this point extends to the Supreme Court only, and that submission would be mandatory except for self-represented litigants. Following discussion, the phrase "encouraged, but" was deleted from the proposed amendment to Pr. Bk. Sec. 67-2 (alternative 1), and the last word of the proposal was changed from 'filed' to 'submitted'. Upon motion by Attorney Horton, seconded by Attorney Weller, the proposal as amended was unanimously approved.

(b) Proposal by Attorney William Gallagher authorizing filing by fax of motions for extension of time. Consideration of proposed alternative rules authorizing fax filing and e-mail filing of motions for extension of time.

Justice Schaller asked Attorney Angers for an update; she responded that her office is looking at the impact of both e-mail and fax submission. There is concern with managing the intake of information by these alternative means, similar to concerns at the trial court level that are being addressed by the e-filing initiative.

As drafted, the proposed amendment to Pr. Bk. Sec. 66-1(c) (alternative 1) is designed to track Pr. Bk. sec 4-4 (which permits filing by electronic means in Superior Court), and would be limited to motions for extension of time. Following discussion, the draft was amended to limit its operation to post-appeal motions, and state that any procedures and standards would be set forth on the Judicial Branch web site. The Committee acknowledged that those procedures and standards would be established by the judges of the Supreme and Appellate Courts. Upon motion by Attorney Horton, seconded by Attorney Angers, the proposal as amended was unanimously approved.

(c) Proposal by Attorney Wesley Horton concerning Practice Book § 63-3 (Filing of Appeal in General; Number of Copies); further proposal for § 63-3 by Attorney Sheila Huddleston.

Chief Judge Flynn moved adoption of the proposal, which motion was seconded by Attorney Huddleston. Discussion addressed examples of cases where the file may have been transferred, and specifically those cases heard on the Regional Family Trial Docket (RFTD) and Complex Litigation Docket (CLD). The proposal was further amended in new subsection (b) to provide that "a copy may be delivered by hand, fax, or any electronic means permitted by the trial court.". New subsection (c) was amended for clarity by moving the word 'forthwith', and substantively to add habeas corpus cases to those cases where a certified copy of the appeal form must also be served on the appellate bureau of the office of the chief state's attorney. The proposal as amended was unanimously approved.

(d) Proposal to make the parties and/or their counsel responsible, along with the clerk of the trial court, for preparing a complete and accurate record to be forwarded to the AC or SC for cases on appeal.

Attorney Angers indicated that this proposal is currently being discussed by representatives of her office and court operations. The proposal was tabled.

(e) Proposals (1) to require electronic briefs in appeals to be argued before the Supreme Court and (2) to encourage the filing of hyperlinked briefs.

Discussion of this agenda item continued from earlier in the meeting to take up part (2) addressing the filing of hyperlinked briefs. Attorney Weller presented a demonstration of a commercial product that creates a "complex .pdf" containing hyperlinks to cited materials and authorities. She noted that, even with current software developments, the process is quite time-consuming, as each citation must be manually linked to create the final file. At the request of the subcommittee on electronic filing, Attorney Weller obtained information about the cost of this service. Her research suggests that a charge of \$2.50 per link is typical. For one appeal, the cost to hyperlink two 35 page briefs, one reply brief, an appendix and the record, would be approximately \$6,000.00. Two weeks turnaround is typical.

Attorney Weller stated that her research revealed no states that require hyperlinked briefs. For those courts that accept such briefs, parties are encouraged to provide them, and rules define how the cost is shared or borne by the parties. Attorney Horton stated that he thought that an all-or-nothing approach is

most appropriate. Attorney Zeldis added that, since this is a court-driven proposal, perhaps this information could be provided to the Supreme and Appellate Courts to obtain further guidance as to how the Committee might proceed. Justice Schaller and Chief Judge Flynn agreed with Attorney Zeldis' suggestion, and will bring the information to their respective courts.

Attorney Klau added that he sees additional rigor brought to appellate practice by hyperlinked briefs, encouraging more disciplined lawyering along with great convenience to the courts. Attorney Giesen was asked to draft a proposal; Attorney Weller suggested the Texas model as most consistent with this Committee's discussion.

II. NEW BUSINESS

(a) Suggestion for amendments to Section 62-9A (Hybrid Representation; Removal or Substitution of Counsel in Criminal and Habeas Corpus Appeals).

Chief Judge Flynn summarized this proposal by reviewing a letter he sent to the Chief Justice (copy distributed to the Committee). Attorney Horton moved approval of the proposal, which was seconded by Attorney Angers. There was no further discussion, and the proposal was unanimously approved.

(b) Proposal from Chief Clerk's Office regarding § 69-3 (Time for Assignments; Order of Assignment).

Attorney Angers presented this proposal by analogizing it to the existing provisions regarding motions for extension of time. A copy of any request to the clerk's office regarding assignment of an appeal would be mailed to each client who is a party to the appeal. An amendment to the proposal, substituting the word "making" for the word "filing" in the proposed new language was suggested. Attorney Horton moved approval of the proposal as amended, which motion was seconded by Attorney Marks; the motion was unanimously approved.

(c) Suggestions for Appellate Rules Amendments by the CBA Appellate Advocacy Committee. (Over from June 23, 2008 meeting.) See (1) attachment from CBA Appellate Advocacy Committee and (2) proposed amendments to §§ 71-1 and 71-4.

The Committee first addressed the second part of this proposal, which amends two rules to clarify certain dates. Specifically, the change to the rule would state that the

operative date for release of a slip opinion is the date of mailing. Further minor revisions were made to the proposal and a motion to adopt as amended was made by Attorney Horton, seconded by Attorney Ray. The proposal was unanimously approved. The first part of this agenda item was deferred until later in the meeting.

(d) Proposal by Chief Clerk regarding §§ 67-2 (Format) and 67-8 (The Appendix).

Attorney Angers explained that this proposal seeks to amend Pr. Bk. Sec. 67-2 and 67-8 to explicitly include cross-references to other sections of the rules that contain guidance for preparation of the brief and appendix, and to move a paragraph addressing preparation of the appendix from section 67-2 to section 67-8. An amendment was accepted to add reference to sections 67-4 and 67-5 in the proposed new language in section 67-2. Motion to approve the proposal as amended was made by Attorney Horton, and seconded by Attorney Weller. The motion was unanimously approved.

(f) Suggestion for amendment to § 62-9 (Withdrawal of Appearance)

Chief Judge Flynn moved approval of the proposal, which motion was seconded by Attorney Horton. Attorney Angers asked whether the language *pro se* should be replaced by reference to self represented litigants. Attorney Loftus indicated that he is working on a comprehensive revision that will change all references; accordingly there was no change to this proposal. The motion was unanimously approved.

(e) Letter from Daniel Healy, dated September 18, 2008.

Discussion of this letter, suggesting a time limit be imposed for the issuance of memoranda of decisions, began with Attorney Horton noting that California has a 90 day requirement. Chief Judge Flynn added that Georgia also has a relevant rule, but that there are some important distinctions between and among states. Specifically, Connecticut is unusual in that all opinions are published, and there is a relatively low percentage of *per curiam* opinions.

Discussion continued with Justice Schaller and Chief Judge Flynn stating that the goal of each court is to publish opinions within the court year in which they were heard or submitted to the Court. They questioned whether a deadline would impact the

ability of the court to deliberate as it deems necessary, and Attorney Huddleston suggested that there could be an unintended increase in the number of *per curiams*. The Committee agreed that the purpose appears reasonable, but that there could be practical difficulties. The Committee did not act on the proposal.

(c) Suggestions for Appellate Rules Amendments by the CBA Appellate Advocacy Committee. (Over from June 23, 2008 meeting.) See (1) attachment from CBA Appellate Advocacy Committee and (2) proposed amendments to §§ 71-1 and 71-4.

The Committee addressed a number of proposals presented by the CBA Appellate Advocacy Committee (copy attached to minutes). In turn, as presented:

1. **Filing of Appeals and Amended Appeals.** Attorney Giesen was asked to draft proposals consistent with the first and third suggested revisions to 63-3 and 63-4. The second suggestion, directed to the form, is to be addressed by Attorney Angers and she is asked to report back to the Committee. Attorney Giesen was asked to draft a proposal based on the fourth suggestion pertaining to final judgments. Discussion of this last item specifically directed reference to the federal rule regarding 'untimely' appeals.

2. **Appellate Motions and Stays.** The first suggestion, seeking to address confusion over motions filed in cases on appeal but that will be acted on by the trial court, suggests clarification. Attorney Babbin was asked to draft a proposal to address this suggestion, which includes a provision that, where the motion is to be acted on by a trial court judge, an order page be included consistent with those required in trial court cases. The second and third issues are still under consideration by the CBA Committee, and a follow-up report will be provided to the Appellate Rules Committee if and when appropriate.

3. **Appellate Briefs.** Attorney Giesen was asked to draft a proposal consistent with the suggestion on the first issue, statement of relief requested. No action is to be taken at this time on the second suggestion regarding formatting (double spacing) briefs.

4. **Oral Argument.** Discussion of the impact of designating cases as 'standby' cases included the burden on attorneys to prepare multiple times, and the expense where out-of-state

litigants and/or attorneys are involved in an appeal. Justice Schaller asked that information regarding standby cases - including frequency of utilization - be collected to assist the Courts in assessing this suggestion.

(g) *Such other matters as may come before the Committee*

No other matters were raised.

III. NEXT MEETING

No future meeting date was set.

The meeting adjourned at 4:45 p.m.