

## Meeting of the Advisory Committee on Appellate Rules

Thursday, October 28, 2021

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 Babbitt

Attorney Colleen Barnett

Attorney Jill Begemann

Attorney Carl Cicchetti

Attorney Richard Emanuel

Attorney Susan Hamilton

Attorney Paul Hartan

Attorney Wesley Horton

Attorney James Healey

Attorney Clare Kindall

Attorney Daniel J. Krisch

Attorney Eric Levine

Attorney Bruce Lockwood

Attorney Jessie Opinion

Attorney Jamie Porter

Attorney Charles Ray

Attorney Giovanna Weller

### **Members not in attendance:**

Attorney Jennifer Bourn

Hon. Sheila Huddleston

### **Additional Attendees:**

Attorney Pamela Nagy (for Atty. Bourn)

Attorney Andrew Redman

Alison Chandler (External Affairs)

### *Preliminary matters:*

This meeting was conducted via videoconference on the Microsoft Teams platform and was livestreamed on the YouTube channel for the Judicial Branch.

## **I. OLD BUSINESS**

### **A. Approval of minutes of April 6, 2021 and April 13, 2021**

Attorney Horton moved to approve the minutes. Attorney Krisch seconded. The motion passed unanimously.

### **B. Whether to amend the rules to require a more comprehensive listing of interested parties**

Discussion item. This matter previously had been considered by the Advisory Committee at the request of Justice McDonald. The attached draft amendments were prepared in 2017 and would need to be updated before proposed amendments could be considered for a vote. Query whether a similar disclosure requirement should be proposed for the Rules Committee of the Superior Court. Query whether the final proposal should hew more closely to the disclosure requirement under the Federal Rules, as counsel for private corporate entities have experience with navigating those requirements. Specific suggestions for improving the final proposal included amending the proposed definition of "a certificate of interested entities or persons": (1) to reflect

that the 10 percent threshold applies to publicly held entities owning an interest in the represented entity; (2) to reflect that the disclosure requirement applies to the ownership of the represented entity that is a party and not to, for example, the ownership of some much larger entity that owns a small portion of the represented entity that is a party; (3) by removing "interested" before individuals; (4) by replacing "individuals" with "persons" because "persons" is used in the name of the certificate, or vice versa. The matter was referred to the workgroup and the proposal and was tabled for further consideration at a future meeting.

## **II. NEW BUSINESS**

N.B. Attorney Begemann noted that a portion of proposal (A) and proposal (B) were prompted by letters submitted to the Advisory Committee by Kacey Lewis, an inmate at a correctional institution, which were included in the meeting materials.

### **A. Whether to amend § 66-1 regarding motions for extension of time.**

Proposal presented by Judge Prescott and Attorney Cicchetti. The amendment to subsection (d) gives parties who are exempt from electronic filing, which includes incarcerated self-represented litigants, an additional 5 days to object to a motion for an extension of time. The first sentence of subsection (e) has been deleted, as that requirement has not been treated as mandatory. Attorneys Lockwood and Kindall spoke in support. Attorney Kindall moved to adopt the proposal. Attorney Weller seconded. The motion passed unanimously.

### **B. Whether to amend §§ 70-1 and 79a-9 regarding the time to file a request for oral argument.**

Attorney Begemann presented this proposal, which increased the time from seven to ten days to file a request for oral argument following the issuance of notice from the court that the case would be decided on briefs and the record only. The additional time would be especially helpful to incarcerated self-represented litigants. Attorney Kindall moved to adopt the proposal. Attorney Porter seconded. The motion passed unanimously.

### **C. Whether to amend § 72-3 regarding writs of error**

Attorney Cicchetti presented this proposal. When a party files an appeal, the party must file certain preliminary papers listed in § 63-4 (a) within 10 days. The proposed amendment to § 72-3 (f) requires that a plaintiff in error similarly must file a certificate regarding transcripts and a docketing statement within 10 days of filing the writ of error. In addition, new subsection (j) clarifies that briefing is in accordance with the rules applicable to appeals. Attorney Porter moved to adopt the proposal. Attorney Kindall seconded. The motion passed unanimously.

### **D. Whether to amend § 79a-3 (b) regarding the appointment of an appellate review attorney for cases in which the party did not have appointed counsel below.**

Judge Prescott explained that this proposed addition to subsection (b) seeks to clarify the amendments adopted in response to *In re Taijha H.B.* The proposed amendment makes it explicit that an indigent party who did *not* have appointed counsel at trial and applies for the appointment of counsel for an appeal shall be appointed an appellate review attorney for the purpose of determining whether there is a nonfrivolous ground on which to appeal. That attorney will follow the procedures set forth in subsection (c). Attorneys Kindall and Hamilton spoke in support of the amendment as making the rule clear and consistent with current practice. Attorney Kindall moved to adopt the proposal. Attorney Porter seconded. The motion passed unanimously.

#### **E. Whether to amend § 66-5 regarding motions for rectification or articulation**

Attorney Cicchetti presented this proposal. The proposed changes to the third paragraph make this rule consistent with the recently enacted amendments regarding the preparation of the clerk appendix. In addition, the seventh paragraph has been simplified and amended to reflect the current practice of the court, which is that if a final order has been issued for the appellant's brief, the appellant must obtain permission of the court before filing a motion for articulation/rectification. Attorney Kindall moved to adopt the proposal. Attorney Weller seconded. The motion passed unanimously.

#### **F. Whether to amend §§ 81-2 and 84-5 regarding petitions filed with the Supreme and Appellate Courts**

Attorney Cicchetti explained that orders are not issued on motions for extensions of time. The proposed amendments make it clear that orders on such motions are not required to be included in the appendix to petitions. Attorney Kindall moved to adopt the proposal. Attorney Babbitt seconded. The motion passed unanimously.

#### **G. Whether to amend the rules to provide for review of a decision denying an application for a fee waiver for the commencement of a habeas action or a civil action**

Judge Prescott and Attorney Porter presented this matter for discussion. The relevant statute, General Statutes § 52-259b, was amended effective October 1, 2013, to allow a judge of the Superior Court to deny a fee waiver application by an indigent applicant if the judge determines that the proposed action is part of a pattern of successive or frivolous filings. If the application is denied, the applicant can request a hearing before the trial court, but there is presently no avenue of appellate review of a denial of an application following a hearing. Discussion of whether there would be appellate jurisdiction over such a matter absent a statutory amendment; whether this presented a significant problem in need of a solution; whether a petition for review similar to a petition for review of a bail bond would be an appropriate mechanism. In addition, practical concerns were discussed regarding the mechanics of appellate review of a denied fee waiver application—such as whether notice to the potential defendants or the commissioner of correction in habeas cases—would be required, especially in the context of frivolous/harassing claims. Following discussion, the matter was tabled pending input from External Affairs and other stakeholders.

**H. Whether to add a rule regarding disqualification of appellate jurists and propose an amendment to the Code of Judicial Conduct regarding judicial disqualification.**

Judge Prescott and Attorney Begemann presented this proposal, which included a draft of a new rule § 66-9. Subsection (b) of that proposed rule is the current text of Comment 7 to Rule 2.11 in the Code of Judicial Conduct, which was adopted in 2010 and applies only to the judges and justices of the Appellate and Supreme Courts. The "on the record" language in Rule 2.11 (e) of the Code presents a problem for appellate jurists. Questions were raised about counsel for amicus filers versus parties. Attorney Kindall spoke in favor of transparency generally, and would prefer to know if a litigant has filed a complaint with the Judicial Review Council, for example, even if the jurist is not disqualified. The proposed amendment to the Code would be discussed with Justice McDonald and possibly referred to the Rules Committee of the Superior Court for consideration. The matter was tabled for consideration at a future meeting.

**I. Whether to consider amending § 70-9 regarding coverage of court proceedings by cameras and electronic media.**

Attorney Hartan explained that there was a desire to review this rule, noting that the Superior Court counterpart to this rule was also under review. Justice D'Auria explained that the Supreme Court recently received a request to record court proceedings from someone who was not a media outlet. Attorney Hartan and Justice D'Auria invited thoughts and comments from members of the Advisory Committee as to whether this rule should be updated to address changing technology etc.

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

Attorney Kindall noted that potential amicus filers do not have access to the party briefs in child protection matters. Attorney Cicchetti indicated that this was a matter that the clerk's office could address.

**IV. NEXT MEETING**

Anticipated to be sometime in April, 2022.

The meeting adjourned at 3:40 p.m.

Respectfully submitted,

Colleen Barnett