ADVISORY COMMITTEE ON APPELLATE RULES
FEBRUARY 22, 2011

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

Justice Christine Vertefeuille, co-chair
Chief Judge Alexandra DiPentima, co-chair
Attorney Wesley Horton
Attorney Kenneth Bartschi
Attorney Michele Angers
Attorney Sheila Huddleston
Attorney Gregory D'Auria
Attorney Charles Ray
Attorney Elizabeth Inkster
Attorney Gail Giesen
Attorney Thomas Smith
Attorney Susan Marks

Also in attendance were:

Attorney Jill Begemann
Attorney Lori Petruzzelli
Mr. Michael Nowacki

I. OLD BUSINESS

(a) Minutes from March 31, 2010

A motion to accept the minutes as distributed made by Attorney Angers, seconded by Attorney Horton, and was unanimously approved.

(b) Proposed amendments to § 63-3 (Filing of Appeal; Number of Copies)

Judge DiPentima noted that this proposal was originally raised by then Chief Judge Flynn regarding attempts to expedite juvenile appeals. The proposal was explained and discussed by Judge DiPentima and Attorney Huddleston. Judge DiPentima explained that discussions with the Committee to Expedite Child Protection Appeals with respect to child protection appeals have indicated that an overhaul of chapter 79 of the Practice Book has been suggested. A time frame of June, 2011 was indicated.

Judge DiPentima moved to table further discussions until the committee has more information, seconded by Attorney Horton.

II. NEW BUSINESS

(a) Proposed amendment to § 61-8 (Extensions of Time for Cross Appeals)

Discussion regarding memo from Attorney William Gallagher proposing amendment to § 61-8 to indicate that extensions of time for filing cross appeals may be filed with the appellate clerk. Attorney Horton disagreed with the memo, suggested that the cross appeal be treated like the appeal, and proposed that the rule stay the same. Attorney Angers agreed with Attorney Horton.

Justice Vertefeuille suggested that further discussions be tabled because Attorney Gallagher was unavailable to address the proposed amendments, and the matter was marked over to the next meeting.

(b) Proposed amendments regarding oral argument and videoconferencing with respect to § 66-4 (Hearings on Motions), § 70-1 (Right to Oral Argument), § 70-2 (When Oral Argument Not Required)

Discussion on § 66-4 regarding amendment to provide that oral argument involving self-represented litigants who are incarcerated may be conducted by videoconference. Judge DiPentima indicated that videoconferencing worked well in the Appellate Court with respect to motions argument and was well received by both state's attorneys and public defenders.

Justice Vertefeuille suggested that the amended language be rephrased as follows: "IN CASES INVOLVING PARTIES WHO ARE SELF-REPRESENTED AND INCARCERATED, HEARINGS ON MOTIONS MAY BE CONDUCTED BY VIDEOCONFERENCE UPON DIRECTION OF THE COURT."

Attorney Horton moved to adopt the rule change, which was seconded by Attorney Ray and unanimously approved.

There was brief discussion on § 70-1 (a) and (b). Judge DiPentima noted that the language of § 70-1 (b) should be rephrased as follows: "Any party may request [a hearing on the court's determination] ARGUMENT by letter addressed to the appellate clerk stating briefly the reasons why . . . ."

Attorney Horton moved to adopt the rule change, seconded by Attorney Angers and passed unanimously.

There was considerable discussion on the proposed amendment to § 70-1 (c) with respect to the right to oral argument through the use of a videoconference for self-represented litigants who are incarcerated. Attorney Horton expressed a concern as to whether the self-represented litigant would be able to see the entire panel while the oral argument was taking place. Attorney Inkster was opposed to the rule change because it tends to reduce the pro se litigant to a second class citizen. She indicated that they should have the right to oral argument to the court rather than by videoconference. Attorney Huddleston also expressed concerns as to problems with the videotaping technology. Attorney D'Auria indicated that a videoconference loses something with

respect to the advocacy of one's argument and proposed the option that the state's attorney's argument could be by videoconference as well. Attorney Marks agreed with the position advocated by Attorney D'Auria regarding the state's attorney's argument. Attorney Inkster proposed the option for the court to consider oral argument at certain of the correctional institutions on occasion. Judge DiPentima was not in favor of that option due to the low number of appeals with self-represented inmates and the feasibility of videoconferencing.

Justice Vertefeuille suggested that the language in 70-1 (c) be rephrased as follows: "IN MATTERS INVOLVING PARTIES WHO ARE SELF-REPRESENTED AND INCARCERATED, ORAL ARGUMENTS MAY BE CONDUCTED BY VIDEOCONFERENCE UPON DIRECTION OF THE COURT."

Attorney D'Auria moved to adopt the rule change, which was seconded by Attorney Horton and approved with everyone in favor except Attorney Inkster.

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Before any further discussion with respect to items on the agenda could take place, the meeting was interrupted by a member of the public, Mr. Nowacki, who demanded that the meeting be terminated. Mr. Nowacki claimed that the Committee was in violation of the Freedom of Information Act because he did not have advance notice of the meeting, except for the public notice on the Judicial Branch Website stating that there was a meeting of the Advisory Committee on Appellate Rules scheduled for February 22, 2011. He further claimed that the Committee was removing constitutional rights of the citizens of the state with respect to the proposed amendments of §§ 61-11 and 61-12 concerning stays in domestic relations cases. Mr. Nowacki further stated that a federal lawsuit would be filed against the Committee for holding this meeting.

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Justice Vertefeuille returned to the business on the agenda and there was brief discussion on § 70-2 concerning submission of a case without oral argument on request of parties. Judge DiPentima noted that the language of § 70-2 should be rephrased as follows: "With the permission of the court, counsel OR A SELF-REPRESENTED PARTY may, before or after a case has been assigned . . . . "

Judge DiPentima also asked Attorney Giesen to add further language to the rule indicating that it applies "ONLY TO PARTIES WHO HAVE APPEARED AND FILED BRIEFS."

Attorney Horton moved to adopt the rule with the revision suggested by Judge DiPentima and the new language to be added by Attorney Giesen, it was seconded by Attorney Ray, and it was passed unanimously.

(c) Proposed amendments to § 63-10 (Preargument conference), § 63-4 (Additional Papers to Be Filed by Appellant and Appellee when Filing Appeal)

Attorney Giesen discussed the proposal by Judge Pellegrino to amend § 63-10 and the corresponding § 63-4 to delete reference to the appellate clerk's office as the entity responsible for scheduling preargument conferences because the conference judge is responsible for that matter. Attorney Giesen also explained that the amendment lists the matters that are not eligible for preargument conference and establishes a procedure for requesting a conference in an exempt case.

Attorney Horton moved to adopt the rule change, seconded by Attorney Angers, and it was passed unanimously.

(d) Letter from Attorney Robert Byron concerning amendment to § 67-2 requiring e-mail address on appellate briefs and proposing change to notice of appellate decisions.

Attorney Smith discussed the process by which counsel is provided e-mail notification of appellate decisions, and explained that the Reporter's office does not have the ability to take an e-mail address from counsel's annual registration as proposed, that the e-mail address is in fact taken from counsel's appearance form, and that the current procedures do not allow for counsel to appear electronically. Attorney Smith explained that notice will be received by counsel only if the e-mail address submitted by counsel is accurate and legible, and if it is then accurately inputted by the Reporter's office.

Attorney Smith explained that the amendment to § 67-2 regarding the requirement of an e-mail address on appellate briefs was intended to help solve some of theses problems, that the commentary to the rule informs counsel that it is a courtesy notice only, and that General Statutes § 51-213 provides that official notification to counsel is publication of the opinion in the Connecticut Law Journal. No action was taken by the Committee on this proposal.

(e) Proposal for amendments to §§ 61-11, 61-12 and 25-5. Proposal for amendment to § 61-10.

Attorney Bartschi explained and discussed the proposed amendments by the Connecticut Bar Association Appellate Advisory Committee to §§ 61-11 and 61-12 to clarify when an automatic stay is in effect in appeals from domestic relations cases, and to identify certain factors that family court judges should consider when deciding whether to terminate an automatic stay or to impose a discretionary stay. Attorney Bartschi also explained that the Family Relations Commission was planning to suggest to the Superior Court Rules Committee an amendment to § 25-5 in reference to proposed changes to §§ 61-11 and 61-12. Attorney Bartschi explained that the proposal was not a formal recommendation by the CBA but rather the view of the Appellate Advisory Committee and many practitioners.

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Before any further discussion could take place, the meeting was again interrupted by Mr. Nowacki, who again stated that the meeting taking place was illegal. Mr. Nowacki claimed that the Committee was in violation of General Statutes § 51-14 because he did not have advance notice of the meeting and was not allowed to add certain items to the agenda. He further claimed that the proposed amendments to §§ 61-11 and 61-12 constituted an unlawful seizure of assets and that the Committee was violating the constitutional rights of the citizens of the state. Mr. Nowacki again stated that a federal lawsuit would be filed on Friday against the Committee for holding the meeting and for violation of his constitutional and civil rights. Following a lengthy and loud lecture to the Committee, Mr. Nowacki left the meeting upon the arrival of Security Officer Dave Foran.

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Justice Vertefeuille resumed the meeting for further discussion of the proposed amendments to §§ 61-11 and 61-12. Attorney Huddleston indicated that a case was pending before the Appellate Court (AC 31904) raising an issue regarding the stay of a pendente lite order in a family law case. Attorneys Bartschi and Giesen were asked to review the stay rules and eliminate any redundancies for review by the co-chairs. Justice Vertefeuille moved to table further discussions until the committee had more information, which was seconded by Attorney Horton.

Attorney Huddleston spoke on behalf of the Connecticut Bar Association Appellate Advisory Committee with respect to their Report on the Articulation Process in Connecticut and their proposed change to § 61-10.

In summary, the Report states that the existing articulation system should be overhauled because it often results in an unfair and inequitable finding that a party has forfeited a right to obtain appellate review for failure to seek an articulation from the trial court, there is a lack of certainty as to when articulation is needed, and the current system encourages trial judges to withhold the grounds for their decisions unless an articulation is requested. The proposed amendment to § 61-10 states that the failure to seek articulation shall not be grounds for the court to decline to review any issue or claim on appeal.

Attorneys Huddleston, Horton, Ray, and Inkster spoke in favor of the proposal for a change in the articulation rule. Attorney D'Auria also spoke in favor of the proposal but questioned whether it needed to be reduced to a rule. Attorney Marks also spoke in favor of the proposal and suggested commentary for the benefit of the pro se litigants explaining the failure to raise claims below and the failure to file a motion for articulation. Justice Vertefeuille asked Attorney Huddleston to draft some language for the commentary.

Judge DiPentima indicated that the Appellate Court judges have been asked for

their response to this proposal. Judge DiPentima also stated that the proposed rule change will have a big impact on the trial bench and that the Committee will want to hear their viewpoint as to the rule change. Upon the suggestion of Judge DiPentima, the matter was tabled until the next meeting.

III. NEXT MEETING

A date for the next meeting was set for Wednesday, May 11, 2011 at 2:00 p.m. in the Attorneys' Conference Room of the Supreme Court. Upon motion of Justice Vertefeuille, seconded by Judge DiPentima, the meeting adjourned at 3:32 p.m.