Advisory Committee on Appellate Rules
September 26, 2016

The meeting was called to order by Justice Palmer 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 Gregory D'Auria
Attorney Kathryn Calibey
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
Attorney Giovanna Weller

Additional Attendees:
Justice Peter T. Zarella
Judge William Bright
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Jessie Opinion

I. Old Business

A. Approval of Minutes of May 24, 2016

The committee unanimously approved the minutes of the May 24, 2016 meeting.

B. Proposal that section 62-9 be amended to require that *Anders* briefs be filed under seal

Under the proposed amendment, filings associated with a Motion for Withdrawal of an Appearance would be filed and maintained under seal. Committee members questioned how parties will be notified of the trial court's ruling on the motion under the new rule. Judge Bright explained that under current procedure, an order page is available to the public and the memorandum of decision is sealed. The Appellate Clerk's Office will continue to send this order page.

Attorney Porter suggested restoring the phrase "pursuant to Section 43-34" to the amendment and adding a reference to Section 23-41a. Attorney Hartan clarified that

motions for review will be filed under seal in the future.

Attorney Horton moved that the committee adopt the amendment as modified. The motion was seconded by Attorney Weller and passed unanimously, with Attorney Marks abstaining.

C. Proposal that section 66-5 be amended to require that transcript be furnished with some motions for articulation

Judge Bright explained that when requests for articulation are submitted six or more months after the proceedings, it may be hard for the trial court to recall the particulars associated with the case. Rather than have the judge order the transcript, the proposal would require the parties to submit the relevant portions of the transcript with the motion.

Attorney Horton disagreed with the proposal initially, believing that it would slow the process down and lead to debate concerning the relevant portions of the transcript. Judge Bright explained that because the typical trial is quite short, and long trials are the exception rather than the rule, the proposal would be unlikely lead to delay or debate.

All committee members agreed with Attorney Babbin's suggestion, which will be provided to the committee, to amend the proposal to permit attorneys to append useful materials and to specify that under section 61-10, the trial court may request assistance from the parties in obtaining transcripts and other materials.

The committee tabled the proposal until the next meeting to permit further amendments to the language.

D. William O. Petaway's complaint re: section 84-3

The committee considered Mr. Petaway's proposal to clarify that the trial courts must rely on Appellate Court law, even when the Supreme Court has granted certification to review the case. Because this proposal concerns an issue of law, and is not a matter that may be addressed by rule, the committee did not accept the proposal. Attorney DeMeo will send a letter to Mr. Petaway notifying him of the committee's decision.

E. Attorney Morgan's proposal that section 67-2 be amended to provide that the date of the e-filing of an appellate brief governs the timeliness of its filing

Justice Zarella explained if the electronic filing date became the official filing date for appellate briefs, paper briefs would not be filed in numerous cases. Last year, 1,438 appeals were filed. Under the proposal, the Appellate Clerk's Office would spend a significant amount of time working to obtain paper copies in the majority of those cases.

Attorney Horton moved that the committee reject the proposal. The motion was seconded by Attorney DeMeo and passed unanimously.

F. Attorney Horton's proposal re: section 63-4 and the judgment file

Before section 63-4 was amended in 2015, it listed cases in which a judgment file was *not* required. When section 63-4 was amended to eliminate references to the draft judgment file, and to point the parties to sections 6-2 and 6-3 in preparing the judgment file, that list of exceptions was deleted. Attorney Horton pointed out that, with the deletion of the list, the rules now suggest that a judgment file is necessary in every case. Although this is a matter that must be addressed in the Superior Court rules, it has a significant impact on the appellate system because if a judgment file is not included in part I of the appendix to a brief, the brief is returned.

Attorney Babbin questioned the need for a judgment file altogether. Attorney Horton moved that the matter be tabled so that Justice Palmer and Judge DiPentima may discuss the issue with the Supreme Court and the Appellate Court to determine whether a judgment file is useful to the courts or may be eliminated. The motion was seconded by Attorney Smith and passed unanimously.

II. New Business

A. Proposal that section 61-11 be amended to provide that no automatic appellate stay shall apply to orders in family support magistrate matters

This proposal would clarify that the provisions of section 61-11, pertaining to stays of execution, also apply to appeals from Superior Court decisions involving family support magistrate matters. Attorney Porter suggested amending the proposed language to clarify that it pertains to appeals from the Superior Court, rather than to the initial appeal from the magistrate matter to the Superior Court.

The proposed changes would be consistent with General Statutes § 46b-231 (p), which provide that the filing of an appeal from a decision of a family support magistrate does not affect the order of support of a family support magistrate. The Superior Court may also need to amend its rules to clarify that the order of support remains in effect.

Attorney Horton moved that the matter be tabled to permit further revisions to the language for consideration at the next meeting. The motion was seconded by Attorney Meotti and passed unanimously.

B. Proposal that sections 66-2 (b) and 81-2 (b) be amended to allow for 15 pages motions, petitions and applications

After careful consideration, the committee declined to adopt the proposal permitting more pages, noting that the 10 page limit is sufficient.

C. Proposed amendments to sections 62-6, 63-2, 69-1, 69-2, 69-3, 63-8, 67-2 and 84-11

Sections 62-6, 69-2, 63-8 and 84-11: The committee did not discuss these proposed changes, which are minor and would have little impact on the bar.

Section 63-2: Under this amendment, the window in the clerk's office would be open from 8:30 a.m. until 4:30 p.m. Because the proposed rule suggests that all briefs must be filed by 4:30 p.m., whereas the commentary indicates that briefs may be deposited in the clerk's office lobby by 5 p.m., the clerk's office will clarify the language. To eliminate the discrepancy, the clerk's office will also incorporate the second and third sentences of the commentary into the rule. ("Paper briefs required to be filed pursuant to Chapter 67 that are deposited in the clerk's office lobby by 5 p.m. will be considered filed as of that date. Paper documents that are deposited in the clerk's office lobby by 5 p.m. by counsel of record who has received an exemption from the requirements of electronic filing will be considered filed as of that date.") The changes will be circulated to committee members by e-mail for approval.

Sections 63-8A (b): The committee added the word "and" and eliminated extraneous commas.

Section 67-2: The committee concluded that changes to this section are not necessary.

Sections 69-1 and 69-3: Following these proposed amendments, which are intended to reduce costs, the clerk's office would no longer send paper notice to counsel of record concerning the docket or the assignment of cases for oral argument. Instead, this information would be posted on the Judicial Branch Website. As the e-filing system evolves, parties could subscribe to receive electronic notifications but this system will not be in place before the changes take effect.

A number of committee members are concerned that people who do not handle many appeals will not be aware that a case has been assigned for argument and may miss argument. One possible stop gap measure is to send a single page letter to the parties notifying them when the case has been assigned. This would not be necessary once the e-filing notification system is implemented.

Committee members also suggested revising sections 69-1 and 69-3 to incorporate the commentary. By doing so, the rules would specify that the posting of docket information or case assignment information on the judicial branch website will be the official notice and only counsel of record who are exempt from the requirements of electronic filing will be delivered notice.
Judge DiPentima explained that these cost-saving provisions are necessary but emphasized that the clerk's office will look into alternatives to ensure that people are aware of upcoming arguments.

Attorney Horton moved that the committee adopt sections 62-6, 63-8, 69-2 and 84-11 as proposed, adopt 69-1 and 69-3 as amended, and adopt 63-2 as further amended by the clerk's office and subject to approval by the committee. The motion was seconded by Attorney Babbin and passed unanimously.

D. Proposed amendments to sections 60-4, 62-8, 70-3, 70-4 and 70-5

With the exception of 60-4, committee members had no comments or suggestions with respect to the proposed language.

Attorney Babbin suggested further revisions to section 60-4 as follows:
"Counsel of record" shall include all attorneys and self-represented parties appearing in the trial court at the time of the initial appellate filing, unless an exception pursuant to Section 62-8 applies, all attorneys and self-represented parties who filed the appellate matter, and all attorneys and self-represented parties who file an appearance in the appellate matter.

Attorney Horton moved that the committee adopt sections 60-4 as amended and sections 62-8, 70-3, 70-4 and 70-5 as proposed. The motion was seconded by Attorney Marks and passed unanimously.

E. Discussion re: effect of 2013 amendment to section 61-10

The Appellate Court judges would like the committee to reconsider the recent revisions to section 61-10. In the wake of the amendment, the Appellate Court judges now learn of problems with the record that require articulation at the time of oral argument. Although it is the appellant's burden to perfect the record for appeal, the Appellate Court is finding that the record in many appeals is incomplete. Sending the matter to the trial court for an articulation after the case has been argued on appeal can be problematic after so much time has passed.

In response to questions from committee members concerning the numbers of cases that are remanded for articulation and whether the remand orders are most prevalent in certain types of cases, Judge DiPentima will inquire with the Appellate Court judges and gather information about the number of remands, the types of cases involved, and whether the amendment to section 61-10 has resulted in attorneys filing fewer motions for articulation.

Committee members voted unanimously to table the matter pending further investigation.

F. Discussion re: need for amendment of rules governing writs of error

The new e-filing procedures may require some changes to the writ of error rule. A number of individuals are e-filing the appeal form to docket the matter and start the process, but they are not taking subsequent steps, such as serving or returning the writ and filing these documents.

In response to Attorney Horton's suggestion that writs be abolished altogether, which would require a statutory change, Attorney DeMeo noted that writs of error are

necessary to afford non-parties a means for appellate review. Committee members agreed that the process for filing writs of error should be simplified.
Attorneys Hartan, DeMeo and Meotti) volunteered to work on amendments to the rule. Attorney Weller volunteered to work on it in 2017. Attorney D'Auria may assist as well.

Committee members voted unanimously to mark the matter over pending suggested amendments by the subcommittee.

G. Discussion re: advisability of proposing rules establishing procedures for receiving and ruling on requests to seal portions of Supreme and Appellate Court files.
Judge Sheldon, who played a significant role in drafting similar provisions for the Superior Court, will be asked to chair an in-house committee to draft similar rules for the appellate system.

III. Any other business that may come before the committee

There was no additional business for consideration by the committee.

IV. Next Meeting

The committee will meet again before the end of the year, during the first or second week of December.