ADVISORY COMMITTEE ON APPELLATE RULES
DECEMBER 19, 2012

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

Justice Christine Vertefeuille, Co-Chair
Chief Judge Alexandra DiPentima, Co-Chair
Judge Eliot Prescott
Attorney Michele Angers
Attorney Gregory D'Auria
Attorney John DeMeo
Attorney Wesley Horton
Attorney Susan Marks
Attorney Pamela Meotti
Attorney Thomas Smith
Attorney Martin Zeldis

Also in attendance were:

Attorney Jill Begemann
Attorney Lori Petruzzelli

Justice Vertefeuille announced that Professor Colin Tait had resigned from the committee after many years of service and that the Chief Justice would appoint a new committee member. Attorney Horton moved to commend Professor Tait for his longstanding service as a member of the committee. The motion was seconded by Attorney Angers and approved unanimously.

I. OLD BUSINESS
A. Minutes of May 30, 2012 Meeting

Justice Vertefeuille asked if there were any corrections or changes, and hearing none, Attorney Horton moved to approve the minutes as distributed. Attorney Marks seconded the motion and it was approved unanimously.

B. Proposed Amendment of § 84-5 (form of petition for certification to Supreme Court)

Justice Vertefeuille explained that the members of the Appellate Court and the Supreme Court had no interest in pursuing this matter and that it should not be given further consideration.

C. Proposed Revisions to Rules of Appellate Procedure Governing Preparation and Filing of the Record

Judge DiPentima indicated that significant changes are being considered with respect to

the preparation and filing of the record. The proposed changes are not yet ready and the matter was marked over for consideration at the next meeting.

II. NEW BUSINESS

A. Proposed Amendment of § 68-1 (trial court's preparation of case file)

Judge DiPentima explained that § 68-1 currently requires the trial court clerk's office to make two copies of each court file within ten days of the filing of an appeal, even if all of the documents in the case were submitted electronically. The amendment, which would make an exception for paperless files, would significantly reduce the workload in the trial court clerk's office. According to Judge DiPentima, all of the participants in a recent pilot case at the Appellate Court agreed that there was no need for paper copies of the file when the file is available electronically.

In response to a question by Attorney Horton, Judge DiPentima confirmed that the rule change would not pertain to the yellow appellate record, and that there would still be a printed yellow record.

Judge Prescott asked how the trial court clerk's office would know if a case contained papers that had been filed solely by electronic means. Judge DiPentima indicated that the trial court clerk's office had been consulted and would be able to make this distinction. She also emphasized that the rule would apply to cases in which every document has been filed electronically and would not apply to files that contain both paper and electronic filings.

Attorney Horton moved for the adoption of the amendment as proposed. The motion was seconded by Judge Prescott and approved unanimously.

B. Proposed Amendment of § 85-3 (procedure on sanctions)

Justice Vertefeuille indicated that the justices of the Supreme Court had proposed this change in response to a growing need to impose sanctions, such as prohibitory orders, when the procedures of the court have been abused. The rule, which would apply to both the Supreme Court and the Appellate Court, would provide parties with notice of possible sanctions and an opportunity to respond, rather than with a hearing before the court. The proposal is based on similar provisions in other jurisdictions.

Attorney Smith asked whether the phrase "opportunity to respond" would be interpreted to provide a right to appear before the court, but Justice Vertefeuille clarified that parties would be instructed to respond in writing.

Attorney Zeldis noted that the Appellate Court previously had dealt with matters such as the failure to file a transcript acknowledgment form by placing them on the motions hearing calendar, but recently seemed to be resolving such matters by sending letters indicating that an appeal would be dismissed if the required action were not taken within a ten day period. Attorney Zeldis then suggested amending the rule to contain a specific

time period for response, rather than a ten day period. Judge DiPentima clarified that § 85-3, which pertains to sanctions, is different from § 85-1, which pertains to the lack of diligence in prosecuting or defending an appeal. She acknowledged Attorney Zeldis' concern that ten days may not afford sufficient time for an attorney to take the required action in matters governed by § 85-1, and indicated that his concern could be addressed internally, rather than by amendment to the rules.

Attorney Horton moved for the adoption of the amendment as proposed. The motion was seconded by Attorney D'Auria and approved unanimously.

C. Proposed Amendment of § 84-4 (filing of petitions for certification to Supreme Court)

Attorney Daniel Krisch sent a letter to the committee seeking to eliminate the requirement that, in cases in which costs and fees have been waived, a party filing a petition for certification to appeal must have the trial court endorse the original petition with a notation that no fees were paid.

Attorney Angers, whose office would be most impacted by the amendment, was amenable to Attorney Krisch's suggestion that counsel be required to include a copy of the appeal form in the appendix to the petition for certification to appeal. The appeal form indicates when costs and fees have been waived.

Attorney DeMeo and Attorney Angers will draft a proposed amendment to the rule for consideration at the next meeting.

D. Proposed Amendment of § 61-11 (stay of execution in noncriminal cases)

Judge Douglas Mintz, who has chaired the foreclosure committee for many years, sent an e-mail to Justice Vertefeuille explaining that his committee had proposed the amendment to address the fact that judges in foreclosure matters are often flooded with motions to open or to reopen immediately before a foreclosure sale or law date. Ruling on the motion, including a denial, leads to an automatic stay under the current rule.

Attorney Horton suggested that the phrase "motion to open or reopen" should be worded "motions that, if granted, would render a judgment, decision or acceptance of the verdict ineffective" as stated in § 63-1 (c) (1). Justice Vertefeuille added that the phrase "defendant owner" should be changed to "defendant owner of the equity."

Attorney Horton also questioned whether the foreclosure committee's concerns could be addressed by adding foreclosure cases to the list of matters in which no automatic stay is available. See Practice Book § 61-11 (b). Judge DiPentima noted that there are times when an automatic stay is a valid response to a motion to open in foreclosure matters. Attorney Horton questioned whether most of these motions in foreclosure actions are filed for valid reasons or for dilatory purposes.

Justice Vertefeuille said that she would discuss this matter with Judge Mintz, and the

matter was continued.

E. Proposed Amendment to § 83-1 (application for General Statutes § 52-265a certification)

Attorney Angers explained that matters filed pursuant to § 52-265a must be presented to the Chief Justice very quickly. The proposed language, which would require the filing party to provide certain information along with the application, would permit the clerk's office to process these matters more expeditiously. Attorney Angers noticed that the word "reviewed" in subsection (4) (A) of the proposed language should be replace by the word "appealed."

Attorney Horton moved for the adoption of the amendment as modified. The motion was seconded by Attorney Marks and approved unanimously.

F. Proposed Amendment of § 63-3 (filing of appeal) and New § 63-3a (e-filed appeals)

Justice Vertefeuille explained that Attorney Huddleston, who was unable to attend the committee meeting, had proposed the amendment to the old rule and the addition of a new rule to consolidate the rules concerning e-filing of appeals. The new rule would serve as a stop gap measure until the appellate e-filing system takes effect. Justice Vertefeuille noticed that the proposed new rule should be entitled "Appeals in E-Filed Cases" rather than "E-filed Appeals." In addition, Judge Prescott suggested that the phrase "in the trial court" should be added to the end of the first sentence after "permitted."

Judge Prescott explained that there are three categories of cases in the trial court: (1) cases in which e-filing is mandatory; (2) cases in which e-filing is permitted but not mandatory; and (3) cases in which e-filing is not permitted. It is unclear what cases would be covered by the proposed language. In addition, it is possible that the rule is intended to apply to all appeals, regardless of whether they were e-filed in the trial court. Attorney Angers indicated that in cases in which e-filing is required, the trial court clerk's office will not accept an appeal unless it is filed electronically.

The committee members agreed that it would be wiser to obtain additional information from Attorney Huddleston. In addition, Judge Prescott suggested consulting Judge Bellis and Judge Munro with respect to e-filing in civil and family matters.

The matter was marked over to permit further investigation.

G. Such Other Matters as may come before the Committee

There were no additional matters for consideration by the committee.

III. Next Meeting

The date for the next meeting was left to the discretion of the committee chairpersons.