RULES OF APPELLATE PROCEDURE

NOTICE

Notice is hereby given that the following amendments to the Rules of Appellate Procedure were adopted to take effect January 1, 2023. The amendments were approved by the Supreme Court on July 19, 2022, and by the Appellate Court on June 29, 2022.

Attest:

Carl D. Cicchetti
Chief Clerk Appellate

INTRODUCTION

Contained herein are amendments to the Rules of Appellate Procedure. These amendments are indicated by brackets for deletions and underlined text for added language. The designation "NEW" is printed with the title of each new rule. This material should be used as a supplement to the Connecticut Practice Book until the 2023 edition of the Practice Book becomes available.

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AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

CHAPTER 60

GENERAL PROVISIONS RELATING TO APPELLATE RULES AND APPELLATE REVIEW

Sec. 60-4. Definitions

''Administrative appeal'' shall mean an appeal from a judgment of the Superior Court concerning the appeal to that court from a decision of any officer, board, commission or agency of the state or of any political subdivision of the state.

''Appellant'' shall mean the party, or parties if an appeal is jointly filed, taking the appeal.

''Appellee'' shall mean all other parties in the trial court at the time of judgment, unless after judgment the matter was withdrawn as to them or unless a motion for permission not to participate in the appeal has been granted by the court.

''Certificate of interested entities or individuals'' is a certificate filed in any civil appellate matter, excluding habeas corpus matters, by counsel of record for a party that is an entity as defined in this rule. The certificate shall list for that party: (1) any parent entities and (2) all entities or individuals owning or controlling an interest of 10 percent or more of that party. If there are no other interested entities or individuals, a certificate indicating that information is required. The certificate shall also state whether the party knows of any direct or indirect ownership, controlling or legal interest for that party that counsel of record thinks could reasonably require a judge to disqualify himself or herself under Rule 2.11 of the Code of Judicial Conduct.

"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 62-8applies, 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.

"Entity" means any corporation, limited liability company, partnership, limited liability partnership, firm or any association that is not a governmental entity or its agencies.

"Filed" shall mean the receipt by the appellate clerk of a paper or document by electronic submission pursuant to Section 60-7. If an exemption to electronic filing has been granted or if the electronic filing requirements do not apply, filed shall mean receipt of the paper or document by hand delivery, by first class mail or by express mail delivered by the United States Postal Service or an equivalent commercial service. If a document must be filed by a certain date under these rules or under any statutory provision, the document must be received by the appellate clerk by the close of business on that date; it is not sufficient that a document be mailed by that date to the appellate clerk unless a rule or statutory provision expressly so computes the time.

"Issues" shall include claims of error, certified questions and questions reserved.

"Motion" shall include applications and petitions, other than petitions for certification. A preappeal motion is one that is filed prior to or independent of an appeal.

"Paper" and "Document" shall include an electronic submission that complies with the procedures and standards established by the

chief clerk of the appellate system under the direction of the administrative judge of the appellate system and a paper or document created in or converted to a digital format by the Judicial Branch.

"Petition" does not include petitions for certification unless the context clearly requires.

"Record" shall include the case file, any decisions, documents, transcripts, recordings and exhibits from the proceedings below, and, in appeals from administrative agencies, the record returned to the trial court by the administrative agency.

"Requests" shall include correspondence and notices as permitted by these rules.

"Signature" shall be made upon entry of an attorney's individual juris number or a self-represented party's user identification number during the filing transaction, unless an exemption from the requirements of Section 60-7 (d) has been granted or applies.

"Submission" shall mean a "paper" or a "document" and shall include an electronic submission that complies with the procedures and standards established by the chief clerk of the appellate system under the direction of the administrative judge of the appellate system.

(For additional definitions, see Secs. 62-2 and 76-6.)

COMMENTARY: These amendments add definitions for "certificate of interested entities or individuals" and "entity" in accordance with a new filing intended to provide the Supreme and Appellate Courts with information regarding individuals or entities that own or have certain controlling or ownership interests in the business entities appearing before those courts.

CHAPTER 61
REMEDY BY APPEAL

Sec. 61-9. Decisions Subsequent to Filing of Appeal; Amended Appeals

Should the trial court, subsequent to the filing of a pending appeal, make a decision that the appellant desires to have reviewed, the appellant shall file an amended appeal within twenty days from the issuance of notice of the decision as provided for in Section 63-1.

The amended appeal shall be filed **[**in the same manner as an original appeal pursuant to Section 63-3**]** in the pending appeal using form JD-SC-033, along with a certification pursuant to Section 62-7. No additional fee is required to be paid upon the filing of an amended appeal.

Within ten days of filing the amended appeal, the appellant shall file with the appellate clerk either a certificate stating that there are no changes to the Section 63-4 papers filed with the original appeal or any amendments to those papers. Any other party may file responsive Section 63-4 papers within twenty days of the filing of the certificate or the amendments.

If the original appeal is dismissed for lack of jurisdiction, any amended appeal shall remain pending if it was filed from a judgment or order from which an original appeal properly could have been filed.

After disposition of an appeal where no amended appeals related to that appeal are pending, a subsequent appeal shall be filed as a new appeal.

If an amended appeal is filed after the filing of the appellant's brief but before the filing of the appellee's brief, the appellant may move

for leave to file a supplemental brief. If an amended appeal is filed after the filing of the appellee's brief, either party may move for such leave. In any event, the court may order that an amended appeal be briefed or heard separately from the original appeal.

If the appellant files a subsequent appeal from a trial court decision in a case where there is a pending appeal, the subsequent appeal may be treated as an amended appeal, and, if it is treated as an amended appeal, there will be no refund of the fees paid.

COMMENTARY: The purpose of this amendment is to more closely conform the text of the rule to e-filing practice.

CHAPTER 62

CHIEF JUDGE, APPELLATE CLERK AND DOCKET: GENERAL ADMINISTRATIVE MATTERS

Sec. 62-5. Changes in Parties

Any change in the parties to an action pending an appeal shall be made in the court in which the appeal is pending. The appellate clerk shall notify the clerk of the trial court of any change.

If any party to a civil action is an entity as defined in Section 60-4, counsel of record shall include a certificate of interested entities or individuals with any motion seeking a change in the parties filed with the appellate clerk.

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

CHAPTER 63

FILING THE APPEAL; WITHDRAWALS

Sec. 63-3. Filing of Appeal

All appeals shall be filed and all fees paid in accordance with the provisions of Section 60-7 or 60-8. The appeal will be docketed upon

filing but may be returned or rejected for noncompliance with the Rules of Appellate Procedure.

The appellant must certify that a copy of the appeal form generated at the time of electronic filing and bearing the assigned docket number and electronic signature of the filer will immediately be delivered pursuant to Section 62-7 (c) to all counsel of record and, in criminal and habeas corpus matters, to the Office of the Chief State's Attorney, Appellate Bureau. The appellate clerk, upon receipt of the foregoing, shall deliver a copy of the appeal form to the clerk of the **[**original**]** trial court**[**, to the clerk of any trial courts to which the matter was transferred, and to each party to the appeal**]**. In criminal and habeas corpus matters, the appellate clerk shall deliver a copy of the appeal form to the Office of the Chief State's Attorney, Appellate Bureau, or to the attorney general, as appropriate.

COMMENTARY: These amendments conform the rule to e-filing practice and available technological capabilities. Notices from the appellate clerk will replace the delivery of the copy of the appeal form as required under the present rule.

Sec. 63-4. Additional Papers To Be Filed by Appellant and Appellee Subsequent to the Filing of the Appeal

(Applicable to appeals filed on or after October 1, 2021.)

(a) Within ten days of filing an appeal, the appellant shall also file with the appellate clerk the following:

(1) A preliminary statement of the issues intended for presentation on appeal. If any appellee wishes to: (A) present for review alternative grounds upon which the judgment may be affirmed; (B) present for

review adverse rulings or decisions of the court which should be considered on appeal in the event the appellant is awarded a new trial; or (C) claim that a new trial rather than a directed judgment should be ordered if the appellant is successful on the appeal, that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues.

Whenever the failure to identify an issue in a preliminary statement of issues prejudices an opposing party, the court may refuse to consider such issue.

(2) A designation of the proposed contents of the clerk appendix that is to be prepared by the appellate clerk under Section 68-2A listing the specific documents docketed in the case file that the appellant deems are necessary to include in the clerk appendix for purposes of presenting the issues on appeal, including their dates of filing in the proceedings below, and, if applicable, their number as listed on the docket sheet. The appellant shall limit the designation to the documents referenced in Section 68-3A for inclusion in the clerk appendix. If any other party disagrees with the inclusion of any documents designated by the appellant, or deems it necessary to include other documents docketed in the case file in the clerk appendix, that party may, within seven days from the filing of the appellant's designation of the proposed contents of the clerk appendix, file its own designation of the proposed contents of the clerk appendix.

(3) A certificate stating that no transcript is deemed necessary or a transcript order confirmation from the official court reporter pursuant to Section 63-8. If the appellant is to rely on any transcript delivered prior to the filing of the appeal, the transcript order confirmation shall

indicate that an electronic version of a previously delivered transcript has been ordered.

If any other party deems any other parts of the transcript necessary that were not ordered by the appellant, that party shall, within twenty days of the filing of the appellant's transcript papers, file a transcript order confirmation for an order placed in compliance with Section 63-8. If the order is for any transcript delivered prior to the filing of the appeal, the transcript order confirmation shall indicate that an electronic version of a previously delivered transcript has been ordered.

(4) A docketing statement containing the following information to the extent known or reasonably ascertainable by the appellant: (A) the names and addresses of all parties to the appeal, <u>and</u> the names, addresses, and e-mail addresses of trial and appellate counsel of record**[**, and the names and addresses of all persons having a legal interest in the cause on appeal sufficient to raise a substantial question whether a judge should be disqualified from participating in the decision on the case by virtue of that judge's personal or financial interest in any such persons**]**; (B) the case names and docket numbers of all pending appeals to the Supreme Court or Appellate Court which arise from substantially the same controversy as the cause on appeal, or involve issues closely related to those presented by the appeal; (C) whether a criminal protective order, civil protective order, or civil restraining order was requested or issued during any of the underlying proceedings; **[**(D) whether there were exhibits in the trial court and, if so, whether the exhibits were physical, electronic or a combination thereof;**]** and (**[**E**]**<u>D</u>) in criminal and habeas cases, the defendant's or petitioner's conviction(s) and sentence(s) that are the subject of the

direct criminal or habeas appeal and whether the defendant or petitioner is incarcerated. If additional information is or becomes known to, or is reasonably ascertainable by the appellee, the appellee shall file a docketing statement supplementing the information required to be provided by the appellant.

When an appellant or an appellee is aware that one or more appellees have no interest in participating in the appeal, the appellant and any other appellees may be relieved of the requirement of certifying copies of filings to those appellees by designating the nonparticipating appellee(s) in a section of the docketing statement named ''Nonparticipating Appellee(s).'' This designation shall indicate that if no docketing statement in disagreement is filed, subsequent filings will not be certified to those appellees.

If an appellee disagrees with the nonparticipating designation, that appellee shall file a docketing statement indicating such disagreement within twenty days of the filing of that designation. All documents filed on or before the expiration of the time for an appellee to file a docketing statement in disagreement as stated above shall be delivered pursuant to Section 62-7 (b) to all counsel of record. If no docketing statement in disagreement is filed, subsequent filings need not be certified to nonparticipating appellees.

(5) In all noncriminal matters, except for matters exempt from a preargument conference pursuant to Section 63-10, a preargument conference statement.

(6) A constitutionality notice, in all noncriminal cases where the constitutionality of a statute has been challenged. Said notice shall identify the statute, the name and address of the party challenging it,

and whether the statute's constitutionality was upheld by the trial court. The appellate clerk shall deliver a copy of such notice to the attorney general. This section does not apply to habeas corpus matters based on criminal convictions, or to any case in which the attorney general is a party, has appeared on behalf of a party, or has filed an amicus brief in proceedings prior to the appeal.

(7) In matters in which documents are under seal, conditionally or otherwise, or limited as to disclosure, a notice identifying the time, date, scope and duration of the sealing order with a copy of the order. (See Section 77-2.)

(8) If an entity as defined in Section 60-4 is an appellant, counsel of record for that entity shall file a certificate of interested entities or individuals as defined in Section 60-4 in any civil appeal to assist the appellate jurists in making an informed decision regarding possible disqualification from the appeal. If an entity in a civil appeal is an appellee, counsel of record for the entity shall file a certificate of interested entities or individuals within twenty days of the filing of the appellant's preliminary statement of the issues. Counsel of record has a continuing duty to amend the certificate of interested entities or individuals during the pendency of the appeal if any changes occur.

(b) Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues at any time until that party's brief is filed. Amendments to the docketing statement may be filed at any time. Amendments to the transcript statement may be made only with leave of the court. If leave to file such an amendment is granted, the adverse party shall have the right to move for permission to file a supplemental brief and for an extension of time. Amendments

to the preargument conference statement shall not be presented in writing but may be presented orally at the preargument conference, if one is held.

(c) Failure to comply with this rule shall be deemed as sufficient reason to schedule a case for sanctions under Section 85-3 or for dismissal under Section 85-1.

COMMENTARY: The purpose of these amendments is to remove subsection (a) (4) (D) in light of changes to how the appellate clerk receives exhibits from the trial court and to describe when a certificate of interested entities or individuals is required to be filed.

Sec. 63-10. Preargument Conferences

The chief justice or the chief judge or a designee may, in cases deemed appropriate, direct that conferences of the parties be scheduled in advance of oral argument. All civil cases are eligible for preargument conferences except habeas corpus appeals, appeals involving juvenile matters, including child protection appeals as defined in Section 79a-1, summary process appeals, foreclosure appeals, and appeals from the suspension of a motor vehicle license due to operating under the influence of liquor or drugs.

In any exempt case, all parties appearing and participating in the appeal may file a joint request for a preargument conference. In a foreclosure case, the request for a preargument conference is sufficient if jointly submitted by the owner of the equity and the foreclosing party. In any exempt case, however, the chief justice or the chief judge or a designee may, if deemed appropriate, order a preargument conference.

The chief justice may designate a judge of the Superior Court, a senior judge or a judge trial referee to preside at a preargument

conference. The scheduling of or attendance at a preargument conference shall not affect the duty of the parties to adhere to the times set for the filing of briefs. Failure of counsel of record to attend a preargument conference may result in the imposition of sanctions under Section 85-2. Unless other arrangements have been approved in advance by the **[**conference**]** presiding judge, parties shall be present at the preargument conference site and available for consultation. When a party against whom a claim is made is insured, an insurance adjuster for such insurance company shall be available by telephone at the time of such preargument conference unless the **[**conference**]** presiding judge, in his or her discretion, requires the attendance of the adjuster at the preargument conference. The preargument conference proceedings shall not be brought to the attention of the court by the presiding **[**officer**]** judge or any of the parties unless the preargument conference results in a final disposition of the appeal.

The following matters may be considered:

(1) Possibility of settlement;

(2) Simplification of issues;

(3) Amendments to the preliminary statement of issues;

(4) Transfer to the Supreme Court;

(5) Timetable for the filing of briefs;

(6) En banc review; and

(7) Such other matters as the **[**conference**]** presiding judge shall consider appropriate.

All matters scheduled for a preargument conference before a judge trial referee are referred to that official by the chief court administrator

pursuant to General Statutes § 52-434a, which vests judge trial referees with the same powers and jurisdiction as Superior Court judges and senior judges, including the power to implement settlements by opening and modifying judgments.

COMMENTARY: These amendments make technical changes to the rule to refer to the presiding judge at the preargument conference in a consistent manner.

CHAPTER 65
TRANSFER OF [CASES] MATTERS

COMMENTARY: This amendment was made for consistency.

Sec. 65-1. Transfer of [Cases] Matter by Supreme Court

[When, p]Pursuant to General Statutes § 51-199 (c), the Supreme Court may [(1)] transfer[s to itself] a [cause in] matter to itself from the Appellate Court[,] or [(2) transfers a cause or a class of causes] from itself to the Appellate Court.[, the appellate clerk shall notify all parties and the clerk of the trial court that the appeal has been transferred. A case so transferred shall be entered upon the docket of the court to which it has been transferred. There shall be no fee on such transfer. The appellate clerk may require the parties to take such steps as may be necessary to make the appeal conform to the rules of the court to which it has been transferred, for example, supply the court with additional copies of the briefs and party appendices, if any.]

COMMENTARY: These amendments clarify existing appellate practice.

(NEW) Sec. 65-1A. Transfer of Matter on Recommendation of Appellate Court

If, at any time before the final determination of a matter, the Appellate Court is of the opinion that the matter is appropriate for Supreme Court

review, the Appellate Court may notify the Supreme Court of the reasons why transfer is appropriate. The Supreme Court will then determine if the matter will be transferred.

COMMENTARY: This new section clarifies existing appellate practice.

Sec. 65-2. [Motion for] Party Motion to Transfer [from Appellate Court to Supreme Court] Appeal, Writ of Error or Reservation

After the filing of an appeal, writ of error or reservation in the Appellate Court, but in no event after **[**the case**]** it has been assigned for hearing, any party may move for transfer to the Supreme Court. The motion, addressed to the Supreme Court, shall specify, in accordance with provisions of Section 66-2, the reasons why the party believes that the Supreme Court should hear the **[**appeal**]** matter directly. A copy of the memorandum of decision of the trial court, if any, shall be attached to the motion. The filing of a motion for transfer shall not stay proceedings in the Appellate Court.

[If, at any time before the final determination of an appeal, the Appellate Court is of the opinion that the appeal is appropriate for Supreme Court review, the Appellate Court may notify the Supreme Court of the reasons why transfer is appropriate. If the Supreme Court transfers the case to itself, the appellate clerk shall promptly notify the parties. The appellate clerk may require the parties to take such steps as may be necessary to make the appeal conform to the rules of the court to which it has been transferred.**]**

COMMENTARY: These amendments clarify existing appellate practice.

Sec. 65-3. Transfer of Petition[s] for Review of Bail Order[s] from Appellate Court to Supreme Court

Whenever a petition for review of an order of the Superior Court concerning release is filed in the Appellate Court pursuant to General Statutes§ 54-63g in any case on appeal to the Supreme Court or where the defendant could appeal to the Supreme Court if convicted, such petition shall be transferred to the Supreme Court pursuant to the exercise of the Supreme Court's transfer jurisdiction under General Statutes § 51-199 (c) for review of such order.

COMMENTARY: These amendments were made for consistency.

Sec. 65-4. Transfer of Matter[s] Brought to Wrong Court

Any **[**appeal or cause**]** <u>matter</u> brought to the Supreme Court or the Appellate Court which is not properly within the jurisdiction of the court to which it is brought shall not be dismissed for the reason that it was brought to the wrong court but shall be transferred by the appellate clerk to the court with jurisdiction and entered on its docket. Any timely filed **[**appeal or cause**]** <u>matter that is</u> transferred shall be considered timely filed in the appropriate court. **[**The appellate clerk shall notify all parties and the clerk of the trial court that the appeal or cause has been transferred. In the event that an appeal or cause is so transferred, no additional fees will be due.**]**

COMMENTARY: These amendments clarify existing appellate practice.

(NEW) Sec. 65-5. Proceedings after Transfer

The appellate clerk shall notify all parties and the clerk of the trial court that a matter has been transferred. The transferred matter shall

be entered upon the docket of the court to which it was transferred. There shall be no fee on such transfer. The appellate clerk may require the parties to take such steps as may be necessary to make the matter conform to the rules of the court to which it has been transferred, for example, supply the court with additional copies of briefs and party appendices, if any.

COMMENTARY: This new section clarifies existing appellate practice and consolidates information previously contained in multiple rules.

CHAPTER 66

MOTIONS AND OTHER PROCEDURES

Sec. 66-1. Extension of Time

(a) Motions to extend the time limit for filing an appeal shall be filed with the clerk of the trial court. Except as otherwise provided in these rules, the judge who tried the case may, for good cause shown, extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be filed is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court in which the appeal is filed. In no event shall the trial judge extend the time for filing the appeal to a date which is more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal.

(b) Motions to extend the time limit for filing any appellate document, other than the appeal or a motion for review of a ruling concerning a

stay of execution pursuant to Section 61-14, shall be filed with the appellate clerk. The motion shall set forth the reason for the requested extension and shall be accompanied by a certification that complies with Section 62-7. An attorney filing such a motion on a client's behalf shall also indicate that a copy of the motion has been delivered to each of his or her clients who are parties to the appeal. The moving party shall also include a statement as to whether the other parties consent or object to the motion. A motion for extension of time to file a brief must specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been filed.

(c) The appellate clerk is authorized to grant or to deny motions for extension of time promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or to defend the appeal, to move for or to oppose a motion for reconsideration, or to petition for or to oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises.

(d) An opposing party who objects to a motion for extension of time filed pursuant to subsection (b) of this section shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion. Parties that are exempt from electronic filing pursuant to Section 60-8 shall file the objection within ten days from the filing of the motion.

(e) [A motion for extension of time shall be filed at least ten days before the expiration of the time limit sought to be extended or, if the

cause for such extension arises during the ten day period, as soon as reasonably possible after such cause has arisen.] No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.

(f) Any action by the trial judge pursuant to subsection (a) of this section or the appellate clerk pursuant to subsection (c) of this section is reviewable pursuant to Section 66-6.

COMMENTARY: The purpose of the amendment to subsection (d) is to give parties who are exempt from e-filing, which includes incarcerated self-represented litigants, an additional five days to object to a motion for an extension of time. The amendment to subsection (e) conforms the rule to what has been treated as mandatory as a matter of practice.

Sec. 66-3. Motion Procedures and Filing

All motions, petitions, applications, memoranda of law, stipulations, and oppositions shall be filed with the appellate clerk in accordance with the provisions of Sections 60-7 and 60-8 and docketed upon filing. The submission may be returned or rejected for noncompliance with the Rules of Appellate Procedure. All papers shall contain a certification that a copy has been delivered to each other counsel of record in accordance with the provisions of Section 62-7.

No paper mentioned above shall be filed after expiration of the time for its filing unless the filer demonstrates good cause for its untimeliness in a separate section captioned ''good cause for late filing.'' No motion directed to the trial court that is required to be filed with the appellate clerk shall be filed after expiration of the time for its filing, except on separate written motion accompanied by the proposed trial court motion and by consent of the Supreme or Appellate

Court. No amendment to any of the above mentioned papers shall be filed except on written motion and by consent of the court.

Motions shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in motions: Arial and Univers. Each page of a motion, petition, application, memorandum of law, stipulation and opposition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2inch; and bottom, 1 inch.

Any preappeal motion, petition, application or opposition filed by an entity as defined in Section 60-4 in a civil matter shall be accompanied by a certificate of interested entities or individuals filed by counsel of record.

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

Sec. 66-5. Motion for Rectification; Motion for Articulation

A motion seeking corrections in the transcript or the trial court record or seeking an articulation or further articulation of the decision of the trial court shall be called a motion for rectification or a motion for articulation, whichever is applicable. Any motion filed pursuant to this section shall state with particularity the relief sought and shall be filed with the appellate clerk. Any other party may oppose the motion by filing an opposition with the appellate clerk within ten days of the filing of the motion for rectification or articulation. The trial court may, in its discretion, require assistance from the parties in providing an articulation. Such assistance may include, but is not limited to, provision of copies of transcripts and exhibits.

The appellate clerk shall forward the motion for rectification or articulation and the opposition, if any, to the trial judge who decided, or presided over, the subject matter of the motion for rectification or articulation for a decision on the motion. If any party requests it and it is deemed necessary by the trial court, the trial court shall hold a hearing at which arguments may be heard, evidence taken or a stipulation of counsel received and approved. The trial court may make such corrections or additions as are necessary for the proper presentation of the issues. The clerk of the trial court shall list the decision on the trial court docket and shall send notice of the court's decision on the motion to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

Nothing herein is intended to affect the existing practice with respect to opening and correcting judgments and the records on which they are based. The trial court shall file any such order changing the judgment or the record with the appellate clerk.

Corrections or articulations made before the clerk appendix is prepared shall be included in the clerk appendix. Corrections or articulations made after the clerk appendix is prepared but before the appellant's brief [and appendix are]is prepared shall be included in the appellant's party appendix. Corrections or articulations made after the appellant's brief [and appendix have]has been filed, but before the appellee's brief [and appendix have]has been filed, shall be included in the appellee's party appendix. [When corrections or articulations are made after both parties' briefs and appendices have been filed, the appellant shall file the corrections or articulations as an addendum to its appendix. Any addendum shall be filed within ten days after

issuance of notice of the trial court's order correcting the record or articulating the decision.]

The sole remedy of any party desiring the court having appellate jurisdiction to review the trial court's decision on the motion filed pursuant to this section or any other correction or addition ordered by the trial court during the pendency of the appeal shall be by motion for review under Section 66-7.

Upon the filing of a timely motion pursuant to Section 66-1, the appellate clerk may extend the time for filing briefs until after the trial court has ruled on a motion made pursuant to this section or until a motion for review under Section 66-7 is decided.

Any motion for rectification or articulation [shall be filed within thirty-five days after the delivery of the last portion of the transcripts or, if none, after the filing of the appeal, or, if no memorandum of decision was filed before the filing of the appeal, after the filing of the memorandum of decision. If the court, sua sponte, sets a different deadline from that provided in Section 67-3 for filing the appellant's brief, a motion for rectification or articulation] shall be filed at least ten days prior to the deadline for filing the appellant's brief, unless otherwise ordered by the court. [The filing deadline may be extended for good cause.] If a final order has been issued for the appellant's brief, no motion for rectification or articulation shall be filed without permission of the court. No motion for rectification or articulation shall be filed after the filing of the appellant's brief except for good cause shown.

A motion for further articulation may be filed by any party within twenty days after issuance of notice of the filing of an articulation by the trial judge. A motion for extension of time to file a motion for articulation shall be filed in accordance with Section 66-1.

COMMENTARY: These amendments make the rule consistent with the recently enacted amendments regarding the preparation of the clerk appendix and to reflect the current practice 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 rectification or articulation.

CHAPTER 67

BRIEFS

Sec. 67-4. The Appellant's Brief; Contents and Organization

The appellant's brief shall contain the following:

(a) A table of contents.

(b) A concise statement setting forth, in separately numbered paragraphs, without detail or discussion, the principal issue or issues involved in the appeal, with appropriate references to the page or pages of the brief where the issue is discussed, pursuant to subsection (e) hereof. Such statement shall be deemed in replacement of and shall supersede the preliminary statement of issues.

(c) A table of authorities cited in the brief, with references to the page or pages of the brief where the citations to those authorities appear. Citations shall be in the form provided in Section 67-11.

(d) A statement of the nature of the proceedings and of the facts of the case bearing on the issues raised. The statement of facts shall be in narrative form, shall be supported by appropriate references to the page or pages of the transcript or to the document upon which the party relies and shall not be unnecessarily detailed or voluminous.

(e) The argument, divided under appropriate headings into as many parts as there are points to be presented, with appropriate references

to the statement of facts or to the page or pages of the transcript or to the relevant document. The argument on each point shall include a separate, brief statement of the standard of review the appellant believes should be applied.

(1) When error is claimed in the trial court's refusal to charge the jury as requested, the party claiming such error shall include in the brief of that party or the appendix thereto a verbatim statement of the relevant portions of the charge as requested and as given by the court and any relevant exceptions to the charge as given and shall recite in narrative form any evidence which it is claimed would entitle that party to the charge as requested, with appropriate references to the page or pages of the transcript.

(2) When error is claimed in the charge to the jury, the brief or appendix shall include a verbatim statement of all relevant portions of the charge and all relevant exceptions to the charge. Unless essential to review of a claimed error, a verbatim statement of the entire charge to the jury should not be included in the brief or appendix. Evidence relevant to the claimed error shall be recited in narrative form with appropriate references to the page or pages of the transcript.

(3) When error is claimed in any evidentiary ruling in a court or jury case, the brief or appendix shall include a verbatim statement of the following: the question or offer of exhibit; the objection and the ground on which it was based; the ground on which the evidence was claimed to be admissible; the answer, if any; and the ruling.

(4) When error is claimed in any other ruling in a court or jury case, the brief or appendix shall include the pertinent motion or pleading as well as any other pertinent documents which are a part of the record of the proceedings below.

(5) When the basis of an evidentiary or other ruling referred to in subsection (e) (3) or (e) (4) cannot be understood without knowledge of the evidence or proceeding which preceded or followed the ruling, a brief narrative or verbatim statement of the evidence or proceeding should be made. A verbatim excerpt from the transcript should not be used if a narrative statement will suffice. When the same ruling is repeated, the brief should contain only a single ruling unless the other rulings are further illustrative of the rule which determined the action of the trial court or establish the materiality or harmfulness of the error claimed. The statement of rulings in the brief shall include appropriate references to the page or pages of the transcript.

(f) A short conclusion stating the precise relief sought.

(g) The text of the pertinent portions of any constitutional provision, statute, ordinance or regulation at issue or on which the appellant relies. Such text need not be included in the brief if it is included in the appendix to the appellant's brief.

(h) In appeals filed pursuant to Section 81-4, a statement identifying the version of the land use regulations filed with the appellate clerk.

(i) In civil appeals filed by an entity as defined in Section 60-4, counsel of record shall include a current certificate of interested entities or individuals in the appellant's brief.

(**[i]** j) The appellant's brief shall be organized in the following order: if the appeal is in a civil matter and the appeal was filed by an entity, a current certificate of interested entities or individuals as defined in Section 60-4; table of contents; statement of issues; table of authorities; if the appeal was filed pursuant to Section 81-4, statement identifying version of land use regulations filed with the appellate clerk; statement

of facts; argument; conclusion and statement of relief requested; signature; and certification pursuant to Section 62-7.

COMMENTARY: These amendments describe when a certificate of interested entities or individuals is required to be filed and dictate the order in which such certificate is to appear in the appellant's brief.

Sec. 67-5. The Appellee's Brief; Contents and Organization

The brief of the appellee shall contain, in a form corresponding to that stated in Section 67-4, the following:

(a) A table of contents.

(b) A counterstatement of any issue involved as to which the appellee disagrees with the statement of the appellant or a statement of any other grounds which were properly raised by an appellee under Section 63-4. Such statement shall be deemed in replacement of and shall supersede the preliminary statement of the issues.

(c) A table of authorities cited in the brief, with references to the page or pages of the brief where the citations to those authorities appear. Citations shall be in the form provided in Section 67-11.

(d) A counter statement of any fact as to which the appellee disagrees with the statement of the appellant. The counter statement of facts shall be in narrative form and shall be supported by appropriate references to the page or pages of the transcript or to the relevant document upon which the appellee relies. An appellee may not rely on any fact unless it is set forth in the appellee's counter statement of facts or in the appellant's statement of facts or is incorporated in any brief of the parties in accordance with Section 67-4 (e) or with subsection (e) hereof.

(e) The argument of the appellee, divided as provided in Section 67-4 (e). The argument on each point shall include a separate, brief

statement of the standard of review the appellee believes should be applied. The argument may augment or take exception to the appellant's presentation of rulings or the charge by reference to any relevant part of the court's charge or any other evidence in narrative or verbatim form which is relevant to such question, with appropriate references to the statements of facts or to the page or pages of the transcript or to the relevant document.

(f) Claims, if any, directed to any rulings or decisions of the trial court adverse to the appellee. These shall be made in the manner provided in Section 67-4 (e).

(g) A short conclusion stating the precise relief sought.

(h) The text of the pertinent portions of any constitutional provision, statute, ordinance or regulation at issue or on which the appellee relies. Such text need not be included in the brief if it is included in the appellant's brief or appendix or in the appendix to the appellee's brief.

(i) In appeals filed pursuant to Section 81-4, a statement as to whether the appellee disputes the applicability of the version of the land use regulations filed with the appellate clerk. If the appellee disputes the applicability of such regulations, it shall set forth its basis for maintaining that such regulations do not apply.

(j) If the appellee is an entity as defined in Section 60-4, counsel of record shall include a current certificate of interested entities or individuals in the appellee's brief.

([j] k) The appellee's brief shall be organized in the following order: a current certificate of interested entities or individuals as defined in Section 60-4; table of contents; statement of issues; table of authorities; statement of facts; argument; conclusion and statement of relief requested; signature; and certification pursuant to Section 62-7.

([k] *l*) When the appellee is also the cross appellant, the issues on the cross appeal shall be briefed in accordance with Section 67-4. In such a case, the briefs shall clearly label which sections of the brief refer to the appeal and which refer to the cross appeal.

COMMENTARY: These amendments describe when a certificate of interested entities or individuals is required to be filed and dictate the order in which such certificate is to appear in the appellee's brief.

Sec. 67-7. The Amicus Curiae Brief

(Applicable to appeals filed before October 1, 2021.)

(a) A brief of an amicus curiae in cases before the court on the merits may be filed only with the permission of the court. An application for permission to appear as amicus curiae and to file a brief shall be filed within twenty days after the filing of the brief of the party, if any, whom the applicant intends to support, and if there is no such party, then the application shall be filed no later than twenty days after the filing of the appellee's brief.

(b) The application shall state concisely the nature of the applicant's interest and the reasons why a brief of an amicus curiae should be allowed. If the applicant in a civil appeal is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the application. The length of the brief shall not exceed ten pages unless a specific request is made for a brief of more than that length. The application shall conform to the requirements set forth in Sections 66-2 and 66-3. The amicus application should specifically set forth reasons to justify the filing of a brief in excess of ten pages. A party in receipt of an application may, within ten days after the filing of the application, file an objection concisely stating the reasons therefor.

(c) All briefs filed under this section shall comply with the applicable provisions of this chapter and shall set forth the interest of the amicus curiae. If the appeal is in a civil matter and the amicus curiae is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be included in the brief.

(d) An amicus curiae may argue orally only when a specific request for such permission is granted by the court in which the appeal is pending.

(e) With the exception of briefs filed by the attorney general as provided by this rule, all briefs shall indicate whether counsel for a party wrote the brief in whole or in part and whether such counsel or a party contributed to the cost of the preparation or submission of the brief and shall identify those persons, other than the amicus curiae, its members or its counsel, who made such monetary contribution. The disclosure shall be made in the first footnote on the first page of text.

(f) Except for habeas corpus matters based on criminal convictions, if an appeal in a noncriminal matter involves an attack on the constitutionality of a state statute, the attorney general may appear and file a brief amicus curiae as of right. Any such appearance by the attorney general shall be filed no later than the date on which the brief of the party that the attorney general supports is filed, and the attorney general's brief will be due twenty days after the filing of the brief of the party that the attorney general supports.

COMMENTARY: These amendments describe when a certificate of interested entities or individuals is required to be filed and the requirement that such a certificate shall be included in an amicus brief filed in a civil matter.

Sec. 67-7A. The Amicus Curiae Electronic Brief

(Applicable to appeals filed on or after October 1, 2021.)

(a) A brief of an amicus curiae in cases before the court on the merits may be filed only with the permission of the court unless Section 67-7A (f) applies. An application for permission to appear as amicus curiae and to file a brief shall be filed within twenty days after the filing of the brief of the party, if any, whom the applicant intends to support, and if there is no such party, then the application shall be filed no later than twenty days after the filing of the appellee's brief.

(b) The application shall state concisely the nature of the applicant's interest and the reasons why a brief of an amicus curiae should be allowed. <u>If the applicant in a civil appeal is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the application.</u> The length of the brief shall not exceed 4000 words unless a specific request is made for a brief of more than that length. The application shall conform to the requirements set forth in Sections66-2 and 66-3. The amicus application should specifically set forth reasons to justify the filing of a brief in excess of 4000 words. A party in receipt of an application may, within ten days after the filing of the application, file an objection concisely stating the reasons therefor.

(c) All briefs filed under this section shall comply with the applicable provisions of this chapter and shall set forth the interest of the amicus curiae. <u>If the appeal is in a civil matter and the amicus curiae is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be included in the brief.</u>

(d) An amicus curiae may argue orally only when a specific request for such permission is granted by the court in which the appeal is pending.

(e) With the exception of briefs filed by the attorney general as provided by this rule, all briefs shall indicate whether counsel for a party wrote the brief in whole or in part and whether such counsel or a party contributed to the cost of the preparation or submission of the brief and shall identify those persons, other than the amicus curiae, its members or its counsel, who made such monetary contribution. The disclosure shall be made in the first footnote on the first page of text.

(f) Except for habeas corpus matters based on criminal convictions, if an appeal in a noncriminal matter involves an attack on the constitutionality of a state statute, the attorney general may appear and file a brief amicus curiae as of right. Any such appearance by the attorney general shall be filed no later than the date on which the brief of the party that the attorney general supports is filed, and the attorney general's brief will be due twenty days after the filing of the brief of the party that the attorney general supports.

COMMENTARY: These amendments describe when a certificate of interested entities or individuals is required to be filed and the requirement that such a certificate shall be included in an amicus brief filed in a civil matter.

CHAPTER 70

ARGUMENTS AND MEDIA COVERAGE OF COURT PROCEEDINGS

Sec. 70-1. Oral Argument; Videoconferencing of Oral Argument in Certain Cases

(a) Oral argument will be allowed as of right in all appeals except as provided in subsection (b) of this rule.

(b) In civil cases where: (1) the dispositive issue or set of issues has been recently authoritatively decided; or (2) the facts and legal

arguments are adequately presented in the briefs and the decisional process would not be significantly aided by oral argument, notice will be sent to counsel of record that the case will be decided on the briefs and record only. This notice will be issued after all briefs and appendices, if any, have been filed. Any party may file a request for argument stating briefly the reasons why oral argument is appropriate and shall do so within ten **[**seven**]** days of the issuance of the court's notice. After receipt and consideration of such a request, the court will either assign the case for oral argument or assign the case for disposition without oral argument, as it deems appropriate.

(c) In matters involving incarcerated self-represented parties, oral argument may be conducted by videoconference upon direction of the court in its discretion.

COMMENTARY: The purpose of this amendment is to increase 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 will be decided on briefs and the record only.

Sec. 70-4. Time Allowed for Oral Argument; Who May Argue

Unless the court grants a request for additional time made before oral argument begins, argument of any case shall not exceed **[**one-half hour**]** thirty minutes on each side in the Supreme Court and twenty minutes on each side in the Appellate Court. The time allowed may be apportioned among counsel on the same side of a case as they may choose. The court may terminate the argument whenever in its judgment further argument is unnecessary.

Prior to the date assigned for hearing, counsel of record may file a request with the appellate clerk to allow more than one counsel to present oral argument for one party to the appeal.

In cases in which there is a firm appearance, or in which there are multiple appearances for the same party, if an attorney from the appearing firm or who already has an appearance wishes to argue the appeal but is not identified as the arguing attorney on the brief, the attorney who will be arguing the appeal shall file a letter notifying the court of the change as soon as possible prior to argument.

No argument shall be allowed any party who has not filed a brief or who has not joined in the brief of another party.

COMMENTARY: The intent of these amendments is to clearly state in the rules the different practices of the Supreme and Appellate Courts with respect to the time allotted for oral arguments.

Sec. 70-9. Coverage of Court Proceedings by Cameras and Electronic Media

(a) The broadcasting, televising, recording or photographing of proceedings in the Supreme or Appellate Court by the media as defined in Section 1-10A should be allowed unless the panel of jurists partially or totally excludes coverage in the interests of the administration of justice. **[**Except for those matters enumerated in subsection (c) of this rule, all judicial courtroom proceedings in the Supreme and Appellate Courts are presumed to be subject to coverage by cameras and electronic media.**]**

(b) Unless good cause is shown, any media or pool representative who has been approved as media pursuant to Section 1-10A and wishes to broadcast, televise, record or photograph a Supreme or Appellate Court proceeding shall send an e-mail request for electronic coverage to a person designated by the chief court administrator to receive such requests at least three business days prior to the commencement of the proceeding. Said designee shall promptly transmit

any such request to the panel of jurists assigned to hear the matter. [(1) All such proceedings may be broadcast, televised, videotaped, audio recorded or photographed unless: (A) the panel of jurists grants a motion by a party or a victim in a case requesting the limitation or preclusion of such coverage, or (B) the panel of jurists, on its own motion, limits or precludes such coverage. The right to permit or to exclude coverage, whether partially or totally, at any time in the interests of the administration of justice shall remain with the panel of jurists.

(2) Any party or victim who desires to file a motion to limit or preclude coverage shall do so not later than one week before the start of the term for which the case is subject to being assigned, as indicated on a docket pursuant to Section 69-1. The party or victim shall deliver a copy of such motion to each counsel of record and to any other victim in the case. The party or victim shall give notice to any such victim by notifying the state's attorney in a criminal case, the attorney or guardian ad litem for a minor child in cases involving a minor victim or child represented by an attorney or guardian ad litem, and to any other victim or child by notifying the office of the victim advocate. Endorsed on the motion shall be certification of such delivery. The appellate clerk shall refer any such motion to the panel of jurists for review as soon as the panel is determined. The panel of jurists may consider a late motion to limit or preclude coverage. Prior to acting on such motion, the panel of jurists shall provide any media outlet expected to cover the proceeding an opportunity to respond in writing to the motion.

(3) In acting on such motion or on its own motion, the panel of jurists will apply the presumption that all judicial courtroom proceedings in the Supreme and Appellate Courts are subject to coverage by cameras

and electronic media. In addition, it will be guided by the principles that such coverage should be limited only if there is good cause to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the competing interests at issue.

(4) In acting on such motion or its own motion, the panel of jurists will conclude that the presumption in favor of coverage by cameras and electronic media has been overcome only if it is satisfied that good cause exists for a limitation or preclusion on coverage. If the panel of jurists orders a limitation or preclusion on coverage, it will provide a statement of its reasons. A statement may be written or stated on the record in open court.**]**

(c) The right to permit or to exclude coverage, whether partially or totally, shall remain with the panel of jurists, consistent with subsection (a).

[(c) (1)**]** (d) In any case involving: **[**The presumption in favor of coverage shall not apply to cases involving:**]** **[**(A)**]** (1) sexual assault; **[**(B)**]** (2) risk of injury to, or impairing the morals of, a child; **[**(C)**]** (3) abuse or neglect of a child; **[**(D)**]** (4) termination of parental rights; and **[**(E)**]** (5) contested questions of child custody or visitation, counsel of record shall not disclose any information that would likely publicly reveal the identity or location of the protected parties during the proceeding.

[(2) In cases to which the presumption in favor of coverage does not apply, any person may request such coverage by filing a motion not later than one week before the start of the term for which the case is subject to being assigned, as indicated on the docket pursuant to Section 69-1. The applicant shall deliver a copy of such written request to each counsel of record and to any victim or child in the case. The

applicant shall give notice to any such victim by notifying the state's attorney in a criminal case, the attorney or guardian ad litem for a minor child in cases involving a minor victim or child represented by an attorney or guardian ad litem, and to any other victim or child by notifying the office of the victim advocate. Endorsed on the motion shall be a certification of such delivery. The appellate clerk shall refer any such motion to the panel of jurists for review as soon as the panel is determined. The panel of jurists may consider a late motion requesting coverage. Prior to acting on such motion, the panel of jurists shall provide the parties, any such minor children and any victims of the offense an opportunity to respond in writing to the motion. The panel of jurists shall grant the motion only if it is satisfied that the need for such coverage outweighs the privacy interests involved in the case.

(d) The Supreme and Appellate Courts shall establish appropriate protocols governing the number, location and use of all forms of coverage consistent with these rules.**]**

(e) If there are multiple requests to broadcast, televise, record or photograph the same proceeding, the media representatives making such requests must make pooling arrangements among themselves, unless otherwise determined by the panel of jurists. The panel of jurists shall not mediate any disputes among the media regarding pooling arrangements.

[(e)**]** (f) As used in this rule, "panel of jurists" means the justices or judges assigned to hear a particular case.

COMMENTARY: The purpose of these amendments is to conform the rule to the current practice before the Supreme Court, and to

instruct counsel of record not to disclose in certain cases the identity or location of protected parties.

CHAPTER 72

WRITS OF ERROR

Sec. 72-1. Writs of Error; In General

(a) Writs of error for errors in matters of law only may be brought from a final judgment of the Superior Court to the Appellate Court in the following cases: (1) a decision binding on an aggrieved nonparty; (2) a summary decision of criminal contempt; (3) a denial of transfer of a small claims action to the regular docket; and (4) as otherwise necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law.

(b) No writ of error may be brought in any civil or criminal proceeding for the correction of any error where (1) the error might have been reviewed by process of appeal, or by way of certification, or (2) the parties, by failure timely to seek a transfer or otherwise, have consented to have the case determined by a court or tribunal from whose judgment there is no right of appeal or opportunity for certification.

(c) If an entity as defined in Section 60-4 is a plaintiff in error or a defendant in error, counsel for that entity shall file a certificate of interested entities or individuals.

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

Sec. 72-3. Applicable Procedure

(a) The writ of error, if in proper form, shall be allowed and signed by a judge or clerk of the court in which the judgment or decree was rendered. The writ of error shall be presented for signature within twenty days of the date notice of the judgment or decision complained

of is given but shall be signed by the judge or clerk even if not presented in a timely manner. Failure without cause to present the writ of error in a timely manner maybe a ground for dismissal of the writ of error by the court having appellate jurisdiction.

(b) The writ of error shall be served and returned as other civil process, except that the writ of error shall be served at least ten days before the return day and shall be returned to the appellate clerk at least one day before the return day. The return days are any Tuesday not less than twelve nor more than thirty days after the writ of error is signed by a judge or clerk of the court.

(c) The writ of error shall be deemed filed the day it is properly returned to the appellate clerk. The plaintiff in error shall return the writ of error to the appellate clerk by (1) complying with Section 60-7 or 60-8 by paying the required fee, submitting a signed application for waiver of fees and the order of the trial court granting the fee waiver, or certifying that no fees are required; (2) submitting the matter in accordance with the provisions of Section 63-3; and (3) submitting the allowed and signed writ of error and the signed marshal's return to the appellate clerk.

(d) An electronically filed writ of error will be docketed upon the submission of the matter in accordance with Section 63-3 but will be rejected upon review by the appellate clerk if the plaintiff in error fails to comply with Section 60-7 or to submit an allowed and signed writ of error and the signed marshal's return on the same business day the matter is submitted in accordance with the provisions of Section 63-3. The writ of error may also be returned upon review by the appellate clerk for noncompliance with the Rules of Appellate Procedure. The appellate clerk shall forthwith give notice to all parties of the filing of the writ of error.

(e) If the writ of error is brought against a judge of the Superior Court to contest a summary decision of criminal contempt by that judge, the defendant in error shall be the Superior Court. In all other writs of error, the writ of error shall bear the caption of the underlying action in which the judgment or decision was rendered. All parties to the underlying action shall be served in accordance with chapter 8 of these rules.

(f) Within ten **[**twenty**]** days of **[**after**]** filing a **[**the**]** writ of error, the plaintiff in error shall file with the appellate clerk

(1) a certificate stating that no transcript is deemed necessary or a transcript order confirmation from the official court reporter in compliance with Section 63-4 (a). If any other party deems any other parts of the transcript necessary that were not ordered by the plaintiff in error, that party shall, within twenty days of the filing of the plaintiff in error's transcript papers, file a transcript order confirmation for an order placed in compliance with Section 63-8 or 63-8A.

(2) A docketing statement in compliance with Section 63-4 (a). If additional information is or becomes known to, or is reasonably ascertainable by the defendant in error, the defendant in error shall file a docketing statement supplementing the information required to be provided by the plaintiff in error.

(g) Within twenty days of filing a writ of error, the plaintiff in error shall file with the appellate clerk such documents as are necessary to present the claims of error made in the writ of error, including pertinent pleadings, memoranda of decision and judgment file, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with Section 62-7.

[(g) In the event a transcript is necessary, the plaintiff in error shall follow the procedure set forth in Sections 63-8 and 63-8A.**]**

(h) Within ten days of the filing by the plaintiff in error of the documents referred to in subsection**[**s (f) and**]** (g) of this rule, the defendant in error may file such additional documents as are necessary to defend the action, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with Section62-7.

(i) Answers or other pleas shall not be filed in response to any writ of error.

<u>(j) Briefing is in accordance with Section 67-1 et seq. in which the rules applicable to appellants shall apply to plaintiffs in error, and the rules applicable to appellees shall apply to defendants in error.</u>

COMMENTARY: The purpose of these amendments is to require a plaintiff in error to file a certificate regarding transcripts and a docketing statement within ten days of filing a writ of error for consistency with Section 63-4 (a) and to clarify that briefing is to be in accordance with the rules applicable to appeals.

CHAPTER 73
RESERVATIONS

Sec. 73-1. Reservation of Questions from the Superior Court to the Supreme Court or Appellate Court; Contents of Reservation Request

(a) Counsel may jointly file with the Superior Court a request to reserve questions of law for consideration by the Supreme Court or Appellate Court. A reservation request shall set forth: (1) a stipulation of the essential undisputed facts and a clear and full statement of the question or questions upon which advice is desired; (2) a statement of reasons why the resolution of the question by the appellate court

having jurisdiction would serve the interest of simplicity, directness and judicial economy; and (3) whether the answers to the questions will determine, or are reasonably certain to enter into the final determination of the case. All questions presented for advice shall be specific and shall be phrased so as to require a Yes or No answer.

(b) Reservation requests may be brought only in those cases in which an appeal could have been filed directly to the Supreme Court, or to the Appellate Court, respectively, had judgment been rendered. Reservations in cases where the proper court for the appeal cannot be determined prior to judgment shall be filed directly to the Supreme Court.

(c) If one of the parties to the reservation request in a civil matter is an entity as defined in Section 60-4, the reservation request must also include a certificate of interested entities or individuals filed by counsel of record for that entity.

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

CHAPTER 77

PROCEDURES CONCERNING COURT CLOSURE AND SEALING ORDERS OR ORDERS LIMITING THE DISCLOSURE OF FILES, ADDIDAVITS, DOCUMENTS OR OTHER MATERIAL

Sec. 77-2. Sealing Orders; Treatment of Lodged Records

(a) When, by order of the trial court or by operation of statute, a trial court file is sealed or is subject to limited disclosure, all filings with the appellate clerk in that matter shall be treated similarly unless otherwise ordered by the court having appellate jurisdiction. Any sealing or limitation on disclosure ordered by the trial court or required by operation of statute as to any affidavit, document or other material filed in the trial court shall continue throughout the appellate process.

(b) If a party includes material in a brief or appendix that is sealed or subject to limited disclosure, that party shall file a redacted brief and appendix, if any, to be made available to the public, and an unredacted brief and appendix, if any, to be made available to only the parties and the court. Both the redacted and unredacted brief and appendix shall be filed in accordance with the applicable provisions of Section 67-2 or Section 67-2A, except that only one paper copy of the redacted brief and appendix is required. Prior to filing, counsel of record shall file a letter notifying the court that the briefs and appendices will be filed pursuant to this subsection. This subsection shall not apply to briefs or appendices filed in child protection matters pursuant to Section 79a-6, or where the only redacted material are names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

([b] c) If a claim is raised on appeal challenging the denial of a motion to seal or limit disclosure pursuant to Section 7-4B (d), a lodged record shall remain conditionally under seal in the court having appellate jurisdiction and shall be treated as an exhibit pursuant to the provisions of Section 68-1.

COMMENTARY: The purpose of the new subsection (b) is to facilitate the process by which a party can file an unredacted appellate brief when that party wishes to discuss matters that are subject to a sealing order.

(NEW) CHAPTER 78b

REVIEW OF ORDERS DENYING APPLICATION FOR WAIVER OF FEES TO COMMENCE A CIVIL ACTION OR A WRIT OF HABEAS CORPUS

COMMENTARY: This new chapter would implement review by the Appellate Court of an order denying an application for a fee waiver

for the commencement of a civil action or the filing of a petition for a writ of habeas corpus, contingent on the General Assembly's passing of proposed legislation authorizing such review.

(NEW) Sec. 78b-1. Petition for Review of Order Denying Application for Waiver of Fees to Commence a Civil Action or a Writ of Habeas Corpus

Any person aggrieved by an order of the Superior Court denying an application for waiver of the payment of a fee for filing an action or the cost of service of process to commence a civil action or a writ of habeas corpus in the Superior Court may petition the Appellate Court for review of such an order after a hearing pursuant to the provisions of Section 8-2 (d) and a decision thereon.

Petitions for review of the denial of an application for waiver of the payment of a fee for filing an action or the cost of service of process to commence a civil action or writ of habeas corpus must conform to the requirements for motions for review set forth in Section 66-6 and are subject to transfer to the Supreme Court pursuant to Section 65-3.

COMMENTARY: This new section would implement review by the Appellate Court of an order denying an application for a fee waiver for the commencement of a civil action or the filing of a petition for a writ of habeas corpus, contingent on the General Assembly's passing of proposed legislation authorizing such review.

CHAPTER 79a

APPEALS IN CHILD PROTECTION MATTERS

Sec. 79a-3. Filing of the Appeal

(a) **General provisions**

Appeals in child protection matters shall be filed in accordance with the provisions of Section 63-3 and all required fees shall be paid in accordance with Sections 60-7 and 60-8.

(b) **Appeal by indigent party**

If a trial attorney who has provided representation to an indigent party through the Division of Public Defender Services declines to pursue an appeal, that attorney shall ascertain that the indigent party expressly wishes to appeal and obtain the indigent party's current address, e-mail address and telephone number. The trial attorney shall explain to the indigent party the appellate review process set forth in this section. The trial attorney shall within twenty days of the decision or judgment simultaneously file with the court before which the matter was heard a motion for an additional twenty or forty day extension of time to appeal pursuant to Section 79a-2 (a) and (e), a sworn application signed by the indigent party for appointment of appellate counsel and a waiver of fees, costs and expenses, including the cost of an expedited transcript. If the court finds the indigent party still to be indigent, the court shall not grant the application for appointment of appellate counsel but shall first appoint an appellate review attorney for the sole purpose of determining whether there is any nonfrivolous ground on which to appeal. The trial attorney shall immediately request an expedited transcript from an official court reporter or court recording monitor in accordance with Section 79a-5, the cost of which shall be paid for by the Division of Public Defender Services.

Any party who is indigent who wishes to appeal and was not provided with representation by the Division of Public Defender Services during the proceeding which resulted in the decision or judgment from which an appeal is being sought shall, within twenty days of the decision or judgment, simultaneously file with the court before which the matter was heard a motion for an additional twenty or forty day extension of

time to appeal pursuant to Section 79a-2 (a) and (e), a sworn application signed by the indigent party for appointment of appellate counsel and a waiver of fees, costs, and expenses, including the cost of an expedited transcript. If the court finds the party to be indigent, the court shall not grant the application for appointment of appellate counsel but shall first appoint an appellate review attorney for the sole purpose of determining whether there is any nonfrivolous ground on which to appeal. The indigent party shall immediately request an expedited transcript from the official court reporter or court recording monitor in accordance with Section 79a-5, the cost of which shall be paid for by the Division of Public Defender Services.

(c) **Review by the Division of Public Defender Services**

(1) An appellate review attorney determining whether there is a nonfrivolous ground for appeal shall file a limited "in addition to" appearance with the trial court for the purpose of that determination. If the appellate review attorney determines that there is a nonfrivolous ground on which to appeal, that attorney shall notify the court, and the application for appellate counsel shall be granted by the court. The appellate counsel so appointed shall file a limited "in addition to" appearance with the trial court for the purpose of prosecuting the appeal and shall file the appeal in accordance with Section 63-3.

(2) In a child protection proceeding that has not resulted in the termination of parental rights, if the appellate review attorney determines that there is no nonfrivolous ground on which to appeal, that attorney shall promptly make this determination known to the indigent party, the judicial authority and the Division of Public Defender Services. The reviewing attorney shall inform the indigent party, by letter, of his or her determination and of the balance of the time remaining

to file an appeal as a self-represented party or to secure counsel, who may file an appearance to represent the indigent party on appeal at the indigent party's own expense. A copy of the letter shall be filed with the clerk for juvenile matters forthwith.

(3) In a termination of parental rights proceeding, if the appellate review attorney determines that there is no nonfrivolous ground on which to appeal, that attorney immediately shall file, underseal, a motion for in-court review, which shall indicate that the appellate review attorney has thoroughly reviewed the record for potential errors and set forth the least meritless grounds that might arguably support an appeal and the factual and legal bases for the conclusion that an appeal would be frivolous. Simultaneous with the filing of the motion for in-court review, the appellate review attorney shall provide a copy of such motion to the indigent party seeking to appeal and shall serve counsel of record and the Division of Public Defender Services with a written notice that a motion for an in-court review by the appellate review attorney has been filed, but shall not serve counsel of record or the Division of Public Defender Services with a copy of the motion or any supporting documentation. The clerk for juvenile matters shall schedule a hearing on the motion for in-court review with the presiding judge or other judge designated to hear the motion within ten days of the date of its filing.

(4) Unless the presiding judge was also the trial judge or is unavailable, the presiding judge shall conduct a nonevidentiary hearing to fully examine the motion for an in-court review and any argument or response by the indigent party, together with any relevant portions of the record. The presiding judge shall afford the indigent party an adequate opportunity to bring to the court's attention what he or she

believes are appealable issues. In his or her discretion, such judge may require briefing. The hearing shall be closed except that the appellate review attorney and the indigent party shall attend. If the indigent party cannot attend the hearing for good cause shown, he or she may file, under seal, a written response to the motion for an in-court review prior to the date of the hearing. Absent compelling circumstances, the hearing shall not be continued if the indigent party does not appear.

(A) If, after the in-court review, the presiding judge independently concludes that any appeal would be frivolous, such judge, within fourteen days of the date of the hearing, shall issue a decision, either written or oral, denying the indigent party's application for appellate counsel and setting forth the basis for his or her finding that an appeal would be frivolous. Any written or transcribed oral decision of the presiding judge shall be filed under seal. The presiding judge also shall order the appellate review attorney to inform the indigent party, by letter, of the decision and to provide a copy of the decision to the indigent party. The appellate review attorney shall also advise the indigent party of the balance of the time remaining to file a motion for review and/or an appeal as a self-represented party or to secure counsel who may file an appearance to represent the indigent party for purposes of filing a motion for review and/or an appeal at the indigent party's own expense. A copy of the letter shall be filed with the clerk for juvenile matters forthwith. An indigent party may seek review of a denial of an application for appointment of appellate counsel on the basis of a finding by the presiding judge that any appeal would be frivolous solely by filing, under seal, a motion for review pursuant to Section 79a-2 (d). The Appellate Court shall expeditiously consider any such motion for review.

(B) If, after the in-court review, the presiding judge concludes that the indigent party's appeal is not frivolous, such judge shall grant the application for appointment of appellate counsel.

(5) Any presiding judge who also was the trial judge or is unavailable shall refer a motion for in-court review filed by an appellate review attorney to the chief administrative judge for juvenile matters for assignment to another judicial authority. If such presiding judge is also the chief administrative judge for juvenile matters, then the motion for in-court review shall be referred by the presiding judge to the administrative judge in the judicial district where the juvenile court hearing the motion for in-court review is located for assignment to another judicial authority.

(d) **Duties of clerk for juvenile matters for cases on appeal**

The appellate clerk shall send notice to the clerk for juvenile matters and to the clerk of any trial court to which the matter was transferred that an appeal has been filed. Upon receipt of such notice, the clerk for juvenile matters shall send a copy of the appeal form and the case information form to the Commissioner of Children and Families, to the petitioner upon whose application the proceedings in the Superior Court were instituted, unless such party is the appellant, to any person or agency having custody of any child who is a subject of the proceeding, to the Division of Public Defender Services, and to all other interested persons; and if the addresses of any such persons do not appear of record, the clerk for juvenile matters shall call the matter to the attention of a judge of the Superior Court, who shall make such an order of notice as such judge deems advisable.

COMMENTARY: This amendment is in response to *In re Taijha H.B.*, 333 Conn. 297 (2019), in which the court indicated that an indigent party who did not have appointed counsel at trial and who

applies for the appointment of appellate counsel is entitled to an appellate review attorney for the purpose of determining whether there is a nonfrivolous ground on which to appeal.

Sec. 79a-9. Oral Argument

(a) Oral argument will be allowed as of right except as provided in subsection (b) of this rule.

(b) In child protection appeals as defined by Section 79a-1 where (1) the dispositive issue or set of issues has been recently authoritatively decided, or (2) the facts and legal arguments are adequately presented in the briefs and the decisional process would not be significantly aided by oral argument, notice will be sent to counsel of record that the case will be decided on the briefs and record only. This notice will be issued after all briefs and appendices have been filed. Any party may file a request for argument stating briefly the reasons why oral argument is appropriate and shall do so within <u>ten</u> **[**seven**]** days of the issuance of the court's notice. After receipt and consideration of such a request, the court will either assign the case for oral argument or assign the case for disposition without oral argument, as it deems appropriate.

(c) In matters involving incarcerated self-represented parties, oral argument may be conducted by videoconference upon direction of the court in its discretion.

COMMENTARY: The purpose of this amendment is to increase 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 will be decided on briefs and the record only.

CHAPTER 81

APPEALS TO APPELLATE COURT BY CERTIFICATION FOR REVIEW IN ACCORDANCE WITH GENERAL STATUTES CHAPTERS 124 AND 440

Sec. 81-2. Form of Petition

(a) A petition for certification shall contain the following sections in the order indicated here:

(1) A statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail.

(2) A statement of the basis for certification identifying the specific reasons why the Appellate Court should allow the extraordinary relief of certification. These reasons may include but are not limited to the following:

(A) The court below has decided a question of substance not theretofore determined by the Supreme Court or the Appellate Court or has decided it in a way probably not in accord with applicable decisions of the Supreme Court or the Appellate Court.

(B) The decision under review is in conflict with other decisions of the court below.

(C) The court below has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by any other court, as to call for an exercise of the Appellate Court's supervision.

(D) A question of great public importance is involved.

(3) A summary of the case containing the facts material to the consideration of the questions presented, reciting the disposition of the matter in the trial court, and describing specifically how the trial court decided the questions presented for review in the petition.

(4) A concise argument amplifying the reasons relied upon to support the petition. No separate memorandum of law in support of the petition will be accepted by the appellate clerk.

(5) An appendix containing a table of contents, the operative complaint, all briefs filed by all parties, the opinion or order of the trial court sought to be reviewed, a copy of the order on any motion, other than a motion for extension of time, which would stay or extend the time period for filing the petition, and a list of all parties to the appeal in the trial court with the names, addresses, telephone numbers, e-mail addresses, and, if applicable, the juris numbers of their counsel. If a petitioner in a civil matter is an entity as defined in Section 60-4, counsel of record must also provide a certificate of interested entities or individuals in the appendix. The appendix shall be paginated separately from the petition with consecutively numbered pages preceded by the letter "A."

(b) The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the appellate clerk. The petition shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in petitions: Arial and Univers. Each page of a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch.

COMMENTARY: The amendments to this section clarify that, insofar as orders are not issued in connection with motions for extensions of time, those motions are exempt from the rule, and also describe when a certificate of interested entities or individuals is required to be filed.

Sec. 81-3. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition, any party may file a statement in opposition with the appellate clerk stating the reasons why certification should not be granted. The statement shall be presented in a manner which is responsive, in form and content, to the petition it opposes. The statement in opposition shall not exceed ten pages in length, except with special permission of the appellate clerk. The statement in opposition shall be typewritten and fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in the statement in opposition: Arial and Univers. Each page of a statement in opposition to a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and1/4inch; right, 1/2 inch; and bottom, 1 inch.

No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be delivered in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(d) If the party in a civil matter filing the opposition is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the opposition.

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

CHAPTER 82

CERTIFIED QUESTIONS TO OR FROM COURTS OF OTHER JURISDICTIONS

Sec. 82-3. Contents of Certification Request

A certification request shall set forth: (1) The questions of law to be answered; (2) a finding or stipulation approved by the court setting forth all facts relevant to answering the questions certified and showing fully the nature of the controversy in which the questions arose; (3) that the receiving court may reformulate the questions; and (4) the names and addresses of counsel of record.

The questions presented should be such as will be determinative of the case, and it must appear that their present determination would be in the interest of simplicity, directness and economy of judicial action.

All questions presented shall be specific and shall be phrased so as to require a Yes or No answer, wherever possible.

<u>If one of the parties to the certification request in a civil matter is an entity as defined in Section 60-4, the certification request must also include a certificate of interested entities or individuals filed by counsel of record for that entity.</u>

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

CHAPTER 83

CERTIFICATION PURSUANT TO GENERAL STATUTES § 52-265a IN CASES OF SUBSTANTIAL PUBLIC INTEREST

Sec. 83-1. Application; In General

Within two weeks of the issuance of an order or decision of the Superior Court involving a matter of substantial public interest pursuant

to General Statutes § 52-265a, any party may file an application for certification by the chief justice. The application for certification shall contain: (1) the question of law on which the appeal is to be based; (2) a description of the substantial public interest that is alleged to be involved; (3) an explanation as to why delay may work a substantial injustice; and (4) an appendix with: (A) the decision or order of the Superior Court sought to be appealed and (B) a list of all parties to the case in the Superior Court with the names, addresses, telephone numbers, e-mail addresses and, if applicable, the juris numbers of their counsel. If the party in a civil matter is an entity as defined in Section 60-4, counsel of record must also provide a certificate of interested entities or individuals in the appendix.

Using an expeditious delivery method such as overnight mail or facsimile or other electronic medium, in addition to the certification requirements of Section 62-7, the party submitting the application shall also notify the trial judge and the clerk of the trial court that rendered the decision sought to be appealed.

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

CHAPTER 84

APPEALS TO SUPREME COURT BY CERTIFICATION FOR REVIEW

Sec. 84-5. Form of Petition

(a) A petition for certification shall contain the following sections in the order indicated here:

(1) A brief introduction providing context for the statement of the questions presented for review.

(2) A statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The Supreme Court will ordinarily consider only those questions squarely raised, subject to any limitation in the order granting certification.

(3) A brief history of the case containing the facts material to the consideration of the questions presented, including the disposition of the matter in the Appellate Court, and if applicable, a specific description of how the Appellate Court decided the questions presented for review in the petition.

(4) A concise argument expanding on the bases for certification, as presented in Section 84-2, and explaining why the Supreme Court should allow the extraordinary relief of certification. No separate memorandum of law in support of the petition will be accepted by the appellate clerk.

(5) An appendix, which shall be paginated separately from the petition with consecutively numbered pages preceded by the letter "A," containing:

(A) a table of contents,

(B) the opinion, preferably as published in the Connecticut Law Journal, or order of the Appellate Court sought to be reviewed,

(C) if the opinion or order of the Appellate Court was per curiam or a summary affirmance or dismissal, a copy of the trial court's memorandum of decision that was entered in connection with the claim raised by the petitioner before the Appellate Court, or, if no memorandum was filed, a copy of the trial court's ruling on the matter,

(D) a copy of the order on any motion, other than a motion for extension of time, which would stay or extend the time period for filing the petition,

(E) a list of all parties to the appeal in the Appellate Court with the names, addresses, telephone numbers, e-mail addresses, and, if applicable, the juris numbers of their trial and appellate counsel. <u>If one of the parties in a civil action is an entity as defined in Section 60-4, counsel of record must also provide a certificate of interested entities or individuals.</u>

(b) The petition shall not exceed ten pages in length, exclusive of the appendix, except with special permission of the appellate clerk. The petition shall be typewritten and fully double spaced, and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in petitions: Arial and Univers. Each page of a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inches; right, 1/2 inch; and bottom, 1 inch.

COMMENTARY: The amendments to this section express the preference of the justices of the Supreme Court for the version of the Appellate Court opinion published in the Connecticut Law Journal, clarify that, insofar as orders are not issued in connection with motions for extensions of time, those motions are exempt from the rule, and describe when a certificate of interested entities or individuals is required to be filed.

Sec. 84-6. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition, any party may file a statement in opposition to the petition with the appellate clerk. The statement in opposition shall disclose any reasons why certification should not be granted by the Supreme Court and shall be presented in a manner which is responsive, in form and content, to the petition

it opposes. The statement in opposition shall not exceed ten pages in length except with special permission of the appellate clerk.

The statement in opposition shall be typewritten and fully double spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page. Footnotes and block quotations may be single spaced. Only the following two fonts, of 12 point or larger size, are approved for use in the statement in opposition: Arial and Univers. Each page of a statement in opposition to a petition shall have as a minimum the following margins: top, 1 inch; left, 1 and 1/4 inch; right, 1/2 inch; and bottom, 1 inch. No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be delivered in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(d) If the party filing the opposition in a civil action is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the opposition.

COMMENTARY: This amendment describes when a certificate of interested entities or individuals is required to be filed.

(NEW) Sec. 84-10A. Record

Those portions of the record for the appeal to the Appellate Court relevant to the issue certified by the Supreme Court shall be included in the clerk appendix, which shall be prepared and distributed in accordance with Section 68-2 et seq. In addition, the clerk appendix shall include the order granting certification, the opinion or order of the

Appellate Court under review and, to the extent the appellate clerk deems appropriate, any papers subsequently filed pursuant to Section 84-11.

COMMENTARY: This new section details what constitutes the record in an appeal to the Supreme Court following the granting of a petition for certification to appeal.

Sec. 84-11. Papers To Be Filed by Appellant and Appellee in an Appeal After Certification

(a) Within ten days of filing the appeal, the appellant shall also file a docketing statement pursuant to Section 63-4 (a) (4) and a designation of the proposed contents of the clerk appendix pursuant to Section 63-4 (a) (2). The parties shall not file other Section 63-4 papers on a certified appeal without permission of the Supreme Court.

(**[**a**]**b) **[**Upon the granting of certification,**]** Within ten days of the filing of the appeal, the appellee may **[**present for review**]** file a statement of alternative grounds for affirmance or adverse rulings or decisions to be considered in the event of a new trial, **[**upon which the judgment may be affirmed provided those grounds were raised and briefed in the Appellate Court. Any party to the appeal may also present for review adverse rulings or decisions which should be considered on the appeal in the event of a new trial,**]** provided that such party has raised such claims in the Appellate Court. If such alternative grounds for **[**affirmation**]** affirmance or adverse rulings or decisions to be considered in the event of a new trial were not raised in the Appellate Court, the party seeking to raise them in the Supreme Court must move for special permission to do so prior to the filing of that party's brief. Such permission will be granted only in exceptional cases where the interests of justice so require.

([b]c) Any party may also present for review any claim that the relief afforded by the Appellate Court in its judgment should be modified, provided such claim was raised in the Appellate Court either in such party's brief or upon a motion for reconsideration.

[(c) Any party desiring to present alternative grounds for affirmance, adverse rulings or decisions in the event of a new trial or a claim concerning the relief ordered by the Appellate Court shall file a statement thereof within fourteen days from the date the certified appeal is filed in accordance with Section 84-9.

(d) Except for a docketing statement, parties shall not file other Section 63-4 papers on a certified appeal without permission of the Supreme Court.]

COMMENTARY: These amendments clarify the papers to be filed upon the granting of a petition for certification to appeal by the Supreme Court.