

Meeting of the Advisory Committee on Appellate Rules

Thursday, April 3, 2025, at 2:00 p.m.

Justice D'Auria called the meeting to order at 2:00 p.m.

Members in attendance:

Justice Gregory T. D'Auria, Co-Chair
Attorney Jeffrey Babbin
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Renee Cimino
Attorney Timothy Costello
Attorney Richard Emanuel
Attorney Paul Hartan
Attorney James Healy
Hon. Sheila A. Huddleston
Attorney Daniel Krisch
Attorney Jessie Opinion
Attorney Charles Ray
Attorney René Robertson
Attorney Michael Skold
Attorney Giovanna Weller

Members not in attendance:

Judge Eliot D. Prescott, Co-Chair
Attorney Wesley Horton
Attorney Jennifer Bourn
Attorney Carl Cicchetti
Attorney Eric Levine

Additional attendees:

Chief Judge Melanie L. Cradle
Attorney Kenneth Bartschi (for
Attorney Wesley Horton)
Attorney David Goshdigian
Attorney Andrew Redman

This meeting was held in the Attorney Conference Room at the Supreme Court, and Justice D'Auria opened the meeting by welcoming Chief Judge Cradle, who was sworn in as the Chief Judge of the Appellate Court on March 6, 2025.

I. OLD BUSINESS

A. Approval of the minutes of October 24, 2024 meeting

Attorney Barnett's motion to approve the minutes of the October 24, 2024 meeting was seconded by Attorney Krisch. The minutes were approved unanimously.

B. Whether to amend § 84-1 regarding certification to the Supreme Court

Attorney Goshdigian recounted that, at the October, 2024 meeting, the committee tabled the proposal that would amend § 84-1 to allow for a party to petition the Supreme Court for certification to appeal from the Appellate Court's denial of a motion for permission to file a late appeal, as that proposal is contingent on a change to General Statutes § 51-197f. Attorney Goshdigian reported that the Judicial Branch included the proposed change to § 51-197f in its court operations bill that is currently before the Judiciary Committee. He went on to report that there was a public hearing on the bill on Monday, March, 31, and that the amendment to § 51-197f was not discussed. Attorney Goshdigian detailed that the bill has not advanced past the Judiciary Committee and suggested that this committee could take up the rule proposal again in the fall should the statutory amendment pass.

II. NEW BUSINESS

A. Whether to amend § 68-3A regarding the clerk appendix contents

Attorney Begemann explained that this proposal removes the prohibition on including memoranda of law in the clerk appendix. Justice D'Auria added that the change should not dissuade practitioners from including materials in their party appendix and using hyperlinks to those materials in their briefs, if desired. Attorney Babbin asked for clarification as to whether memoranda of law and replies from all parties will be included in the clerk appendix. Justice D'Auria responded that the Appellate Clerk's Office will include memoranda, including replies, from all parties, and Attorney Robertson added that, generally, memoranda from all parties with respect to a dispositive motion are included in the clerk appendix. Justice D'Auria also offered that this rule will provide the judges with the relevant materials without having to take the time to search through the record. Attorney Robertson moved to approve the proposal, Attorney Barnett seconded, and all members of the committee voted in favor.

B. Whether to amend § 67-10 regarding the citation of supplemental authorities after the brief is filed

Attorney Robertson described that this proposal removes the phrase "and without argument" that follows "concisely" in § 67-10 such that the section will read, "The letter shall concisely state the relevance of the supplemental citations and shall include" She explained that the inclusion of argument in § 67-10 letters has become an issue, especially for those who do not regularly practice appellate law, and, moreover, that the Appellate Clerk's Office has difficulty discerning what constitutes argument in these letters. Attorney Babbin expressed his agreement with the proposal and noted that the proposal does not include a word count requirement. The committee briefly discussed the word count requirement and the consensus was that § 67-10 letters should have a word count certification consistent with the language used throughout the appellate rules, which is discussed later in agenda item H. Attorney Hartan moved to approve the proposal regarding § 67-10, as amended to include a word count certification, which was seconded by Attorney Babbin, and the motion passed unanimously.

C. Whether to amend § 62-9 regarding withdrawal of appearance

Attorney Robertson detailed that the purpose of this proposal is to ensure that clients are notified when an attorney has moved to withdraw his or her appearance, even when there is another appearance on file. Attorney Weller asked whether the phrase, "after an additional appearance," could be clarified because it may be confusing whether the second attorney who filed an appearance in a case can withdraw under this subsection when "an additional appearance" has not been filed yet. Attorney Weller also asked about the phrase, "in place of the appearance," and Attorney Barnett responded that that phrase was substituted for the phrase, "in lieu of," in the Superior Court rules, which is reflected in the appellate rules as well. After a brief discussion, Attorney Weller moved to approve the proposal, as amended to replace the phrase, "after an additional appearance," with "provided that a substitute appearance." Attorney Ray seconded the motion, which passed unanimously.

D. Whether to amend §§ 66-3, 77-1, 78-1, 78a-1, 78b-1, 81-3, 81-5, 83-1A, 83-1B, 84-6, 84-6A and 84-7 regarding motions, petitions and oppositions

Attorney Robertson explained that the purpose of this proposal is to make the formatting rules for briefs, motions, petitions, and oppositions consistent such that all of them are filed, with any attachments, as one document with a single pagination scheme.

Additionally, the proposal makes clear in § 66-3 that a party cannot file a motion to dismiss a motion, and, instead, "shall" raise any jurisdictional claim in the opposition. Judge Huddleston opined that the phrase "motions and oppositions" sounds awkward when read together with "shall be filed as one document." Attorney Babbin agreed and proposed clarifying language to explain that motions and oppositions, including attachments, shall "each" be filed as one document. This item was tabled pending an email vote on a revised proposal.

Addendum. On April 9, 2025, the committee voted unanimously by email to approve the following revised proposal: "Motions and oppositions shall each be filed as one document with a single pagination scheme that starts on the first page of the motion or opposition and continues throughout the entire document, on every page, including the pages in the attached appendix, if any."

E. Whether to amend § 61-16 to require periodic updates in bankruptcy cases

Attorney Barnett described that the appellate courts regularly check on the status of bankruptcy cases when there is a bankruptcy stay in place and that this proposal will make it the parties' responsibility to keep the reviewing court informed in this respect. The proposal requires that, when a bankruptcy petition is filed, the parties shall file notice of periodic updates with the reviewing court and, also, that dismissal of the appeal is a possible sanction for noncompliance. Currently, the Appellate Clerk's Office contacts the parties to ask for bankruptcy updates, and this proposal would put the burden on the parties to provide those updates regularly. Attorney Weller asked whether the rule should detail the substance of the updates. In response, Attorney Barnett highlighted that § 61-16 (a) requires the parties to state the date that the bankruptcy petition was filed, the jurisdiction and docket number, the name of the debtor, and how the automatic bankruptcy stay applies to the case on appeal; Attorney Barnett suggests that an update under this proposal will contain updated information. Attorney Ray proposed deleting the phrase in subsection (c), "If the party who filed the bankruptcy petition or who was the debtor named in an involuntary bankruptcy petition is an appellant," such that the sentence will read, "Failure to comply with the notice requirement of this rule may result in the dismissal of the appeal or the imposition of sanctions pursuant to Section 85-1." Judge Huddleston agreed with Attorney Ray's proposed amendment, and Attorney Robertson moved to adopt the proposal as amended. Attorney Ray seconded the motion, and all members voted in favor of approving the proposal as amended.

F. Whether to amend § 63-4 (a) (3) regarding amendments to the transcript order

Attorney Robertson described that, because the transcript order form is due within ten days of filing an appeal, parties often will file an amended transcript order that necessitates a motion and permission from the court. Under this proposal, parties can

file one amended transcript order form as of right so long as certain conditions are met. Specifically, an amended transcript order requires permission from the court when (A) the party has filed a transcript order form amendment as of right already, (B) the amendment seeks to add transcripts from a different matter, (C) the amendment seeks to add hearing dates that occurred after the appeal was filed, (D) the amendment is sought after the final order for the appellant's brief, or (E) the amendment is sought after the appellant's brief as been filed. Attorney Robertson explained that, under this proposal, a party's brief deadline will still be set based on the date when the initial transcript order was filed and not the date of any amendment. Attorney Bartschi raised the issue of whether permission would be required to request transcripts for an amended appeal, as those transcripts would be for proceedings "that occurred after the appeal was filed." Attorney Barnett noted that a new transcript order form is required for an amended appeal, which Attorney Babbin confirmed under § 61-9. Judge Huddleston recommended amending proposed § 63-4 (a) (3) (C) to provide that permission of the court is required for "any amendments that seek to add hearing dates that occurred after the appeal was filed, except as provided in Section 61-9." The committee then discussed whether a party can order a transcript from "a different trial court matter" and, generally, agreed that such a request is plausible. Attorney Barnett added that this proposal concerns an amendment as of right and that a party is always free to file a motion seeking to amend his or her transcript order. Attorney Krisch moved to approve the proposal as amended, and Attorney Babbin seconded the motion, which passed unanimously.

G. Whether to amend §§ 67-2, 67-2A, 67-3, 67-3A, 65-5, 70-5 and 77-2 regarding briefs and appendices

Attorney Robertson introduced this proposal with a brief overview, describing that it generally provides that parties with an exemption from e-filing shall file one paper brief and that parties who e-file are no longer required to file a paper brief. The proposal also eliminates the required font size and typeface for those with an exemption from e-filing because, at times, the methods employed by exempt filers, such as using typewriters, make it difficult to comply with those format requirements. Attorney Robertson also explained that this proposal provides more specificity with respect to the bookmark requirement for electronic briefs, and, also, that both exempt and nonexempt parties may use a form to request deviations from the briefing requirements. She went on to describe the other aspects of this proposal, which include that an amended transcript order does not affect the brief due date and that, following a transfer, the parties are now required to "update the covers of their briefs with the new court and docket number" before filing them in the new court. The committee generally was very receptive to the proposal, and Attorney Robertson fielded various questions. Attorney Weller noted that the proposal references the "guidelines established by the court and published on the Judicial Branch website" but that she had difficulty finding those guidelines. Attorney Hartan responded that the concern would be addressed, and Attorney Barnett noted that a link to the guidelines is included in the initial letter that the Appellate Clerk's Office sends when an appeal has been filed.

In light of the elimination of the requirement that a paper brief be filed, Attorney Krisch asked whether the court maintained paper copies of briefs in the event that electronic

briefs were unavailable. Attorney Hartan noted that the appellate courts are required to deposit the briefs and clerk appendices with the Connecticut State Library, and Justice D'Auria hypothesized that the archival aspect of this rule change may be beyond the purview of this committee. Attorney Emanuel added that he prefers to use paper copies over electronic documents, and Justice D'Auria responded that the individual judges will be able to access a brief in the judge's preferred format. Attorney Krisch moved to approve the proposal, Attorney Babbin seconded the motion, and all voted in favor.

H. Whether to amend §§ 66-3, 77-1, 78-1, 78a-1, 78b-1, 81-2, 81-3, 84-5 and 84-6 to add a word count certification

In light of the approved rule change in October, 2024, that added a word count certification requirement to petitions, Attorney Krisch proposed that other filings, aside from briefs, also have a word count certification requirement and gave an overview of his proposal. Attorney Babbin noted that the proposal referred to only § 66-2 (b) and that motions for an extension of time are governed by a different word count under § 66-1 (b). He recommended amending the proposal to state that the certification should provide "that the motion or opposition complies with the word count requirement of Section 66-1 (b) or Section 66-2 (b), as applicable." Attorney Ray question whether a word count certification should be required in light of the fact that there is already a requirement under Section 62-7 that the filer certify that "the document complies with all applicable Rules of Appellate Procedure." The committee discussed whether the certification should specify the exact number of words in the filing or if it should generally certify compliance with the word count requirement. Attorney Babbin proffered that the additional certification can help ensure compliance with the rules, and Attorney Krisch did not have strong feelings either way. Attorney Robertson confirmed that the Appellate Clerk's Office will check to ensure compliance with the word count requirement, and she stated a preference not to require the certification of a specific number of words, as that would be another reason to return the filing should the certified word count be incorrect. Attorney Hartan noted that a motion to strike can be used when a filing does not comply with the word count and, then, moved to adopt the proposal, as amended. The motion was seconded by Attorney Ray and passed unanimously. Attorney Robertson noted that, as previously approved, the same language will be added to the proposal regarding supplemental authority letters in Section 67-10.

I. Whether to amend §§ 60-4, 62-5, 63-4, 66-3, 67-4, 67-5, 67-7A, 72-1, 73-1, 81-2, 81-3, 82-3, 83-1, 84-5 and 84-6 regarding the requirement that parties file a certificate of interested entities

Attorney Hartan introduced this proposal by describing the background of the certificate of interested entities requirement. He explained that the certificate of interested entities is not functioning as intended and is creating issues for the appellate courts. Attorney Hartan elaborated that this proposal broadens the definition of "entity" to include trusts and joint ventures and that the proposal provides more flexibility, as the reviewing court will now order the parties to file a certificate of interested entities only when necessary. Attorney Barnett offered additional details on how the certificate of interested entities requirement has impacted the Appellate Court, and she added that, although no longer required, a certificate of interested entities will not be returned if a party submits one absent a court order. Attorney Ray asked when the reviewing court will request a

certificate of interested entities, and Attorney Hartan responded that the intent is to ask for them as soon as the need is apparent. Justice D'Auria added that the judges need this information to be provided to them and that practitioners may try to anticipate when filing a certificate of interested entities could be appropriate. Attorney Babbin detailed that an earlier iteration of the docketing statement required similar information, and he raised the possibility that this information could be included in the docketing statement, which Justice D'Auria agreed was a fair proposal. Attorney Hartan moved to approve the proposal as drafted, and Attorney Healy seconded the motion, which passed unanimously.

III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE

Attorney Babbin described a recent filing in which, instead of using a form provided by the Judicial Branch under a new rule, he drafted a motion himself that the Appellate Clerk's Office returned for not including headings. Attorney Babbin was under the impression that headings were no longer required for these motions, and Attorney Robertson responded that she would look into the issue and follow up with Attorney Babbin.

IV. NEXT MEETING

The date of the next meeting will be at the discretion of the co-chairs, and it is anticipated for fall, 2025.

The meeting adjourned at 3:12 p.m.

Respectfully Submitted,

Attorney David Goshdigian